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Regulation on secondary activities, agreements with third parties and the use of intellectual property in the context of work at the university

From 18 August 2004 (version of 9 July 2018)

The University Council of the University of Basel,

based on § 21 (i) of the agreement between the Cantons of Basel-Landschaft and Basel-Stadt concerning the joint sponsorship of the University of Basel of 27 June 2006¹⁾ and § 49 of the University of Basel Staff Regulations of 22 October 1998²⁾, adopts the following:³⁾

Preamble

The University of Basel is aware of the social obligations that accompany the attainment of knowledge. It welcomes the creative, inventive and innovative achievements of its members, and supports the legal protection of such achievements and their exploitation via knowledge and technology transfer. It also supports practice-oriented partnerships with third parties and other secondary activities carried out by university members, insofar as these contribute to the promotion of teaching and research, continuing education and training, the societal anchorage of the university and the transfer of knowledge.

I. Scope

§ 1 *Personal scope*

¹ This regulation applies to all members of the University of Basel, irrespective of the existence of any particular employment relationship.⁴⁾

² Members of the university with a contractual level of employment of less than 50% are subject to this regulation only if working hours, infrastructure or staff of the university is claimed; the obligation to protect the legitimate interests of the university remains unaffected.⁵⁾

³ In the case of members of the university employed at an institution associated with the university, the President's Board regulates their secondary employment activities within the meaning of this regulation in a separate agreement with these institutions.⁶⁾

⁴ ... 7)

⁵ ... 8)

¹⁾ SG [440.100](#).

²⁾ This regulation is repealed. The University of Basel Staff Regulations of 19 February 2009 (SG [441.100](#)) is now authoritative.

³⁾ Preamble in the version of the University Council decision of 24 May 2007 (effective since 9 August 2007).

⁴⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁵⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁷⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁸⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)



§ 2 *Substantive scope: secondary employment activities*

¹ For the purposes of this regulation, secondary employment means activities carried out for third parties by members of the University of Basel in a personal capacity and in their own names, where such activities are not directly related to the fulfillment of their duties at the university in teaching, research, services or administration.⁹⁾

² For the purposes of this regulation, secondary employment includes in particular:¹⁰⁾

- a) ¹¹⁾ Mandates on management and supervisory boards of private or public sector legal entities and other companies;
- b) ¹²⁾ Public offices in executive, legislative or judicial bodies of the community;
- c) ¹³⁾ External teaching commitments and activities as a speaker as part of a curriculum at another educational institution;
- d) ¹⁴⁾ Participation in external academic or research policy committees and arbitration tribunals (excluding the Swiss National Science Foundation and EU research programs);
- e) ¹⁵⁾ Consultancy activities in the staff member's subject area and other services associated with the transfer of knowledge and technology.

³ The following activities related closely to the work carried out for the university are not considered secondary activities, even if these activities are financially rewarded by the beneficiary:¹⁶⁾

- a) ¹⁷⁾ Work for specialist publications;
- b) ¹⁸⁾ Presentations in the staff member's subject area;
- c) ¹⁹⁾ Participation in and organization of academic conferences;
- d) ²⁰⁾ Participation in committees of the Swiss National Science Foundation and EU research programs;
- e) ²¹⁾ Activities as an expert at subject examinations;
- f) ²²⁾ Preparation of individual reports in the staff member's subject area in support of research proposals and research, appointment and evaluation processes, and for specialist publications and expert committees;

⁹⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹⁰⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹¹⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹²⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹³⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹⁴⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹⁵⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹⁶⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹⁷⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹⁸⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

¹⁹⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

²⁰⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

²¹⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

²²⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

- g) ²³⁾ Coordination, management and teaching as part of continuing education and training programs provided by the University of Basel outside undergraduate teaching;
- h) ²⁴⁾ Consultancy activities and other services for and on behalf of the university;
- i) ²⁵⁾ Mandates on behalf of the university.

⁴ This regulation does not apply to secondary work carried out for a non-profit organization in the staff member's own time that is unrelated to their work at the university.²⁶⁾

§ 3 Substantive scope: agreements with third parties

¹ Agreements with third parties are all forms of collaboration and contractual agreements based on the main activity with partners outside of the University of Basel concerning rights to intellectual property, cooperations, services and contracts for the exchange of research results, materials and techniques.

² In particular, agreements with third parties include research services, commissioned research, expert opinions, contracts for licenses, contracts for the transfer of rights to intellectual property and private sector activities for public sector clients.

³ In particular, agreements with third parties pursuant to this regulation do not include agreements in the context of secondary employment, agreements that are governed in accordance with Section VI § 15, para. 4, agreements with the Swiss National Science Foundation or institutions that promote young academic talent as well as cases of pure grants or other funding that does not involve any consideration other than designation as the patron or sponsor.

§ 4 Substantive scope: exploitation of intellectual property

¹ The provisions concerning the exploitation of intellectual property apply for all intellectual services provided by university members that are based on their activities for or at the university in performance of their duties.

² The foregoing does not include the exploitation of intellectual property transferred in an agreement with third parties.

II. General provisions

§ 5 General purpose

¹ Agreements with third parties, secondary employment and the exploitation of intellectual property must not restrict teaching and research freedom or the impartiality of academic judgment. The interests of the university, particularly its academic reputation, must be protected. Where conflicts between these interests are unavoidable, they must be disclosed to the President's Board and the responsible Dean.²⁷⁾

² The University of Basel may provide its infrastructure to the extent available for the purpose of secondary activities and agreements with third parties.

²³⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

²⁴⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

²⁵⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

²⁶⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

²⁷⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)



³ The President's Board may issue guidelines in connection with this regulation.²⁸⁾

§ 6 Declaration

¹ Agreements with third parties, secondary activities and the exploitation of intellectual property must be declared to the faculty and the President's Board in accordance with the specific provisions of this regulation.²⁹⁾

² ... ³⁰⁾

III. Secondary employment activities

§ 7 Permissibility ³¹⁾

¹ Secondary employment is permitted if:³²⁾

- a) ³³⁾ It does not adversely affect the fulfillment of duties to the university, in particular the independence of teaching and research;
- b) ³⁴⁾ It is compatible with the university's standing;
- c) ³⁵⁾ It does not generally violate the interests of the university or its members. d) ³⁶⁾ ...
- e) ³⁷⁾ ...

² Provided a staff member's duties to the university are performed in full, up to 20% of contractual working hours may be used (equivalent to 44 days per year for full-time employees) for secondary employment activities referred to in Art. 2 para 2 that are directly related to their academic field and assist with the transfer of knowledge and technology. The President's Board is responsible for decisions on exceptions to this; for secondary employment exceeding 20%, a corresponding reduction in working hours may be contractually agreed.³⁸⁾

§ 7a³⁹⁾ Declaration and disclosure⁴⁰⁾

¹ Secondary employment referred to in Art. 2 paras 1 and 2 engaged in by members of the President's Board and category I staff must be declared to the President's Board in full at the end of each calendar year regardless of any approval requirement. For secondary employment, the voluntary disclosure must provide information on:⁴¹⁾

- a) ⁴²⁾ The nature of the secondary employment and the organization for which the work is performed;

²⁸⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

²⁹⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³⁰⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³¹⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³²⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³³⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³⁴⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³⁵⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³⁶⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³⁷⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³⁸⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

³⁹⁾ § 7a inserted by the University Council decision of 24 May 2007 (effective since 9 August 2007).

⁴⁰⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁴¹⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁴²⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

- b) ⁴³⁾ The time commitment;
- c) ⁴⁴⁾ Private income unless this is made in connection with a reduction in university working hours;
- d) ⁴⁵⁾ The extent of use of the university's infrastructure;
- e) ⁴⁶⁾ The extent of use of university staff;
- f) ⁴⁷⁾ The creation of additional costs to the university.

² Secondary employment referred to in Art. 2 para 2 (a) and (b) engaged in by members of the President's Board and category I staff is disclosed by the university. Such disclosure relates solely to the nature of the secondary employment and the organization for which the work is performed. All other secondary employment and information declared in relation to such employment is treated as confidential and is not disclosed.⁴⁸⁾

§ 7b⁴⁹⁾ *Approval*⁵⁰⁾

¹ Members of the President's Board and category I staff are required to obtain prior approval for the following types of secondary employment:⁵¹⁾

- a) ⁵²⁾ Activities on management and supervisory boards of private or public sector legal entities and other companies, other than purely professional associations, specialist committees or alumni organizations;
- b) ⁵³⁾ Public offices in executive, legislative or judicial bodies of the community;
- c) ⁵⁴⁾ Chair of external policy-related research commissions and committees;
- d) ⁵⁵⁾ Secondary employment with a contractually fixed number of hours that, together with the university appointment, exceed a full-time load and a term of more than one year or a permanent position subject to a notice period of several months.

² The approval requirement under para. 1 also applies if the secondary activity is carried out in connection with a government or parliamentary election. Approval must be obtained before the election or candidacy nomination.⁵⁶⁾

³ The President's Board is responsible for approval of secondary employment within the meaning of para 1 for members of the President's Board and category I staff. Such approval may be made subject to

⁴³⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁴⁴⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁴⁵⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁴⁶⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁴⁷⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁴⁸⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁴⁹⁾ § 7b inserted by the University Council decision of 24 May 2007 (effective since 9 August 2007).

⁵⁰⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁵¹⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁵²⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁵³⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁵⁴⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁵⁵⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁵⁶⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)



conditions in order to ensure that no conflicts of interest arise in the course of the activities.⁵⁷⁾

⁴ Staff of all categories are required to obtain the approval of the Administration before engaging in secondary employment that involves the use of infrastructure and staff and which must be compensated in accordance with § 9, or which otherwise gives rise to additional costs for the university.⁵⁸⁾

⁵ Category II and III staff are required to obtain approval from their superior office for secondary employment during working hours as described in § 7 para 2; category IV staff are required to obtain approval from the Administrative Director for such activities.⁵⁹⁾

⁶ The University Council or the President's Board may forbid secondary employment or withdraw previously granted approval if the secondary employment breaches the conditions under § 7.⁶⁰⁾

§ 7c⁶¹⁾ *Approval requirement for private care activities by dentists*

§ 8⁶²⁾ *Granting and withdrawing approval*

§ 9⁶³⁾ *Compensation for the use of infrastructure*

¹ If university infrastructure is used for secondary employment or if the university incurs additional costs, the university must be compensated in full, including overhead costs.⁶⁴⁾

² Use of a member's own office space to the usual extent (including IT, telephone and office equipment) does not require compensation.⁶⁵⁾

a) ⁶⁶⁾ ...

b) ⁶⁷⁾ ...

c) ⁶⁸⁾ ...

³ In order to foster innovation and the transfer of technology, the President's Board may partially waive the compensation requirement if the likely costs to the university will be matched by potential revenue.⁶⁹⁾

§ 9a⁷⁰⁾ *Compensation for the use of academic staff*

⁵⁷⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁵⁸⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁵⁹⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶⁰⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶¹⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶²⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶³⁾ § 9 in the version of the University Council decision of 24 May 2007 (effective since 9 August 2007).

⁶⁴⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶⁵⁾ Version of 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶⁶⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶⁷⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶⁸⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁶⁹⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁷⁰⁾ Repealed on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)



IV. Collaboration with third parties in connection with the main activity

§ 10 *Validity of contracts*

- 1 In order to be valid, agreements with third parties pursuant to this regulation must be in writing and require two signatures pursuant to the regulations on signatures of the University of Basel of 23 January 2003.
- 2 They must designate the University of Basel as a contractual party.

§ 11 *Contract set-up*

- 1 In the interests of the university, agreements with third parties must have a balanced relationship between the performance and the consideration.

§ 12 *Contractual regulation*

- 1 Collaborations with and services for third parties whose contractually agreed income is less than CHF 50,000 per individual project must be regulated contractually by the participants themselves and reported to the faculty and the President's Board.
- 2 Contracts for collaborations with and services for third parties whose contractually agreed income exceeds CHF 50,000 per individual project and all other types of agreements with third parties must be reported to the competent department and faculty and signed off by the President's Board. The President's Board may request an opinion from the knowledge and technology transfer office.
- 3 Competitive neutrality with respect to private providers must be observed for all agreements with third parties. Financial income from such services should be used for apprenticeships and research. §§ 13 and 15 apply for financial income from the exploitation of intellectual property.

§ 13 *Financial regulations*

- 1 Agreements with third parties that include benefits in kind must take account of the cost recovery principle and a global cost share ("overhead") of 20%.
- 2 The university organizational unit that provides the services in accordance with the contract will receive one-quarter of such benefits, while three-quarters go to central administration.
- 3 If, as part of an agreement with third parties, university facilities and/or staff are used, appropriate compensation must be agreed with the competent administration, department or institution head.

V. Specialist office

§ 14

- 1 The university has a specialist office for the transfer of knowledge and technology ("knowledge and technology transfer office"). The knowledge and technology transfer office reports to the President's Board.
- 2 In particular, the knowledge and technology transfer office carries out the following tasks for the President's Board
 - if necessary with the involvement of non-university services in individual cases:
 - a) It supports and advises university members with respect to the structure of agreements with non-university partners;
 - b) It provides information about property rights and registers patents, trademarks and designs;

- c) It aims to exploit the intellectual property created at the university;
- d) It assists university members with the founding of companies;
- e) It oversees the protection of intellectual property created at the university and monitors compliance with contracts concluded with third parties.

³ The knowledge and technology transfer office must be informed of agreements that fall within the scope of this regulation as soon as possible.

⁴ During the performance of its activities, the knowledge and technology transfer office maintains strict confidentiality with respect to persons and institutions outside of and within the university that are not involved in a particular case.

⁵ The knowledge and technology transfer office deals with the matters within the scope of this regulation quickly and takes account of the timing of matters for the relevant persons and institutions in individual cases.

⁶ The services of the knowledge and technology transfer office are free of charge for university members.

⁷ In line with standard practice, the costs of research or other external services utilized by the knowledge and technology transfer office will be borne by the university. In special cases, the knowledge and technology transfer office may, with the consent of the affected university member, agree to cost sharing.

⁸ The costs to register a patent will be borne by the university if the decision regarding the invention is positive (pursuant to § 18).

⁹ The services of the knowledge and technology transfer office will be evaluated on a regular basis.

VI. Exploitation of intellectual property

§ 15 *Ownership and exploitation of copyrights*

¹ The author is entitled to the rights to works protected by copyright (with the exception of computer programs), provided an agreement transferring them to the university has not been concluded.

² If net income is generated from the exploitation of works to which the university has the rights, the income will be divided as follows:

40% goes to the author, 30% goes to the relevant organizational unit, and 30% is retained by the university.

³ If the net income pursuant to para. 2 exceeds CHF 1,000,000 per individual work, the University Council may define a different distribution for the portion in excess of CHF 1,000,000.

⁴ The provisions pursuant to para. 2 and 3 do not apply to the net income from the exploitation of copyrights for academic publications, such as textbooks, articles in scientific journals and the like. Such income will be retained in full by the university member.

⁵ In all cases, university members retain the right to be named as the author.

§ 16 *Ownership and exploitation of inventions, designs and computer programs*

¹ Inventions and designs developed by persons within the scope of this regulation (§ 1) while performing their official activities belong to the university, irrespective of the fulfillment of a contractual obligation (in accordance with Art. 332 of the Swiss Code of Obligations (OR)). The



exploitation rights to computer programs created under the same circumstances belong to the university (in accordance with Art. 17 of the Federal Copyright Act (URG)).

² The net income generated from the exploitation of inventions, designs and computer programs will go to the university and be distributed as follows:

40% goes to the inventor, creator or programmer,

30% goes to the relevant organizational unit, and

30% is retained by the university.

³ If the net income exceeds CHF 1,000,000. per individual invention, design or computer program, the university may define a different distribution for the portion in excess of CHF 1,000,000.

⁴ Members of the university are obliged to register their inventions, designs and computer programs with the knowledge and technology transfer office in the designated manner.

⁵ In all cases, university members retain the right to be named as the inventor, designer, or programmer. However, the university must be allowed to use the research findings for academic purposes in all cases.

§ 17 *Research and business secrets*

¹ The university respects and supports the confidential handling and exchange of research and business secrets.

² It requires its employees to safeguard the research and business secrets that have been entrusted to them by third parties.

§ 18 *Waiver of exploitation and ownership rights*

¹ The university informs inventors, creators and programmers within no later than six months after the invention has been registered whether it intends to claim the rights or if it waives these rights in favor of the inventor. If the university waives the rights, the exploitation and ownership rights will be granted to the inventor at no charge.

§ 19 *Release of exploitation and ownership rights*

¹ The author, inventor, creator and programmer should not incur any disadvantages as a result of the exploitation and/or ownership rights held by the university for their other academic activities at other universities.

² This condition must be taken into account in the interest of the affected party when concluding agreements with third parties.

³ Subject to rights that have already been exploited, the university will ensure, in the interest of the affected party, that approval of the corresponding rights is granted under fair conditions.

§ 20 *Publication and confidentiality*

¹ The publication right of university members is also ensured in connection with agreements with third parties.

² Time-limited confidentiality agreements should enable any patent registrations or other measures to protect intellectual property rights.

³ Other limitations of the publication right of university members should be possible in justified cases and in agreement with the relevant party. Any university interests to the contrary must be taken into account.

§ 20^{a71)} *Transitional provision*

¹ Secondary activities carried out on the basis of current law are subject to the amendments as of 1 January 2019. Secondary activities carried out in accordance with current law are deemed to be approved with immediate effect.

VII. Legal action

§ 21⁷²⁾

¹ Rulings issued by the President's Board in accordance with this regulation may, in accordance with § 30 of the agreement between the Cantons of Basel-Landschaft and Basel-Stadt concerning the joint sponsorship of the University of Basel of 27 June 2006, be contested before the Appeals Committee of the University Council.

VIII. Final provisions

§ 22 *Validity*

¹ This regulation must be published; it is valid with immediate effect.⁷³⁾

² It replaces the regulation on secondary activities and collaboration with third parties in connection with the main activity at the University of Basel of 9 December 1999.

⁷¹⁾ Inserted on 18 April 2018, effective since 9 July 2018 (KB 04.07.2018)

⁷²⁾ § 21 in the version of the University Council decision of 24 May 2007 (effective since 9 August 2007).

⁷³⁾ effective since 23 September 2004.