

## Guidelines concerning Contracts in the Field of Research at ETH Zurich

(Research Contract Guidelines) Version as of 1.10.2023 (This text is a translation. Only the German version is binding.)

The Executive Board of ETH Zurich, based on Art. 4 (1) lit. g Ordinance concerning the Organisation of the Swiss Federal Institute of Technology in Zurich (“Organisationsverordnung der ETH Zürich”) dated 16 December 2003<sup>1</sup>, hereby issues the following guidelines:

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<sup>1</sup> RSETHZ 201.021

## Preamble

ETH Zurich endeavours to ensure that its research results are applied for the good of society. To this end, it works together with domestic and international partners, in particular companies, government organisations and universities/research institutions. The collaboration with these partners is regulated in a large number of agreements. In conjunction with the agreements, these guidelines regulate, in particular, the minimum content of such agreements, the responsibilities in relation to concluding agreements and implementing projects as well as financial aspects such as setting up SAP projects and PSP elements, surcharges and the distribution of such surcharges within ETH Zurich.

## Definitions and abbreviations

**Direct project costs** as defined in these guidelines comprise the entire labour costs of the ETH Zurich employees involved in a project, the consumables and other costs caused directly by the project (see Art. 5.2.1).

**ETH entity** in these guidelines refers to the unit of ETH Zurich that is responsible for a given contract and its fulfilment. An ETH entity has its own identification number ("Leitzahl") and is generally a professor, but can also be, for example, an institute, a department, a non-departmental entity or a centre.

**EU GrantsAccess** is the joint advisory office of the University of Zurich and ETH Zurich for international research programmes.

**EU Framework** refers to the individual official tender conditions for EU Framework Programmes.

**EU contracts** as defined in these guidelines are EU project contracts, EU contract preparation forms, EU consortium agreements and the contracts with the Swiss public sector that are concluded as transitional measures in the period of non-association or partial association of Switzerland to the EU Framework Programmes (see Art. 2.1.4.1).

**Finance Desk** is the area responsible within the Finance and Controlling department of ETH Zurich for opening and closing SAP projects and PSP elements, recording project data (budget, term, etc.) and recording receivables.<sup>2</sup>

**Grants** from US funding institutions within the meaning of these guidelines are funding contributions that are granted by US public funding institutions and that are awarded to ETH Zurich by the relevant funding institutions either directly as the main awardee or through a main subawardee. Details are set out in Directive RSETHZ 442 of 24 June 2014, as amended.

**GTC for Research Contracts** are the General Terms and Conditions of the Federal Government for Research Contracts.

**Innosuisse** is the Swiss Innovation Agency.

**Intellectual property rights** comprise the statutory registry rights (e.g. rights to inventions, designs, topographies, brands) and copyrights (e.g. to computer programs).

**IP and Licences Group** is the unit responsible for patenting and licensing at ETH transfer, within the Vice President's Office for Knowledge Transfer and Corporate Relations at ETH Zurich.<sup>3</sup>

**IP surcharge** or intellectual property surcharge is charged for research projects in addition to the direct costs in certain circumstances (see Art. 5.2.2).

**ISB** or infrastructure contribution is the surcharge charged for research projects in addition to the direct costs (see Art. 5.2.2).

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<sup>2</sup> Version according to Executive Board decision as of 02.10.2018, in effect since 1.1.2019

<sup>3</sup> Editorial adjustment due to reorganisation, in force since 01.10.2023

**IT Procurement & Portfolio** is the area within IT Services at ETH Zurich responsible for ICT purchases (see Art. 2.1.3).

**Procurement** of movable goods, services and construction services is subject to the applicable laws of public procurement<sup>4</sup> as well as to the Financial Regulations<sup>5</sup> of ETH Zurich.

**Purchasing Coordination** is the area responsible within the Finance and Controlling Division at ETH Zurich for all matters in connection with the procurement of goods and services (see Art. 2.1.3).

**Research Contracts Group** is the unit responsible for research contracts and innovation partnerships at Partnerships for Innovation, within the Vice President's Office for Knowledge Transfer and Corporate Relations at ETH Zurich.<sup>6</sup>

**SERI** is the State Secretariat for Education, Research and Innovation.

**Service surcharge** is charged for service projects in addition to the direct costs (see Art. 5.2.2).

**SNSF** is the Swiss National Science Foundation.

**Surcharge** is a certain percentage charged to the contracting party in the form of an ISB, IP surcharge or service surcharge pursuant to the definitions below in addition to the direct costs.

**Third parties** are natural or legal persons in Switzerland and abroad that are independent of ETH Zurich. Students not employed at ETH Zurich have the legal status of third parties.

**VPR** is the Vice President for Research at ETH Zurich<sup>7</sup>.

**VPKC** is the Vice President for Knowledge Transfer and Corporate Relations at ETH Zurich<sup>8</sup>.

## 1. Scope

These research guidelines apply to all contractual agreements of ETH Zurich with its contracting parties in the area of research and are binding upon all employees – including professors – of ETH Zurich.

They do *not* apply to:

- Contracts of natural persons (professors and other ETH employees) in their own name and on their own behalf and into their own bank account (e.g. for advisory services by professors as part of activities outside of their ETH Zurich employment<sup>9</sup>);
- The procurement of goods, services and construction services. These responsibilities lie with Purchasing Coordination (procurement of goods), IT Procurement & Portfolio (ICT purchases) or the Infrastructure Division Real Estate (construction services);
- Regulations concerning participation in, organisation, sponsorship or financing of events;
- Regulations concerning access to and rental of devices, rooms or workstations at ETH Zurich;
- Contracts with publishing companies relating to publications;
- Contracts concerning teaching.

<sup>4</sup> In particular the federal law concerning public procurement ("Bundesgesetz über das öffentliche Beschaffungswesen", BöB; SR 172.056.1) and the directive concerning public procurement ("Verordnung über das öffentliche Beschaffungswesen", VöB; SR 172.056.11) as well as the laws in connection with the WTO Agreement on Government Procurement

<sup>5</sup> Art. 126 et seq. Financial Regulations ("Finanzreglement", RSETHZ 245)

<sup>6</sup> Editorial adjustment due to reorganisation, in force since 01.10.2023

<sup>7</sup> Editorial adjustment due to partial revision of the Organisational Ordinance of 17.01.2020, in force since 01.01.2020

<sup>8</sup> Editorial adjustment due to partial revision of the Organisational Ordinance of 17.01.2020, in force since 01.01.2020

<sup>9</sup> Pursuant to Art. 6 (1) Ordinance on the Faculty of the Federal Institutes of Technology ("ETH-Professorenverordnung", SR 172.220.113.40) and Art. 56 Personnel Regulations ETH Domain ("Personalverordnung ETH-Bereich", SR 172.220.113)

## 2. Types of contracts

### 2.1. Research contracts

Research contracts regulate the involvement of ETH Zurich in clearly defined research projects with one or several academic or non-academic contracting parties that have no overlap with other projects. In research contracts involving cash payments to ETH Zurich, ETH Zurich requires a contribution to the indirect project costs incurred by ETH Zurich (ISB and/or IP surcharge) pursuant to Art. 5.2.2 in addition to payment of the direct project costs. Unlike a provision of services, research projects involve the generation of new insights. The publication of these insights by ETH Zurich must be possible in all cases. Research contracts at ETH Zurich can be broken down into the following categories:

#### 2.1.1. Research contracts without cash payments

ETH Zurich carries out research on a project together with one or several contracting parties and the expenses and costs incurred by the contracting parties are generally borne by each party independently.

For example:

- ETH Zurich and another university carry out joint research on a project without any cash payments flowing between them.

#### 2.1.2. Research contract involving cash payments<sup>10</sup>

##### 2.1.2.1. Non-exclusive rights of use for contracting parties

A contracting party pays ETH Zurich the direct costs for a research project as well as part of the indirect costs in the form of the infrastructure contribution (ISB). Generally, this results in the contracting party being granted, within a clearly defined area of application, non-exclusive rights of use to all project results and a temporary right to negotiate exclusive, paid rights of use to intellectual property rights resulting from the project. In certain circumstances, the non-exclusive right of use to the project results or the right to negotiate exclusive use of intellectual property rights is restricted. Intellectual property rights available for exclusive use are generally restricted to patent-pending inventions and to software.

In the case of research contracts with Swiss federal government agencies where at least non-exclusive rights of use to the project results remain with ETH Zurich, for example under the GTC for Research Contracts, ETH Zurich will not charge the ISB.

Examples:

- Research project of a doctoral or post-doctoral student spanning several years and for which a company is paying the direct project costs as well as the ISB to ETH Zurich.
- Study where ETH Zurich can publish the results. A company is paying the direct project costs as well as the ISB to ETH Zurich.
- Study at ETH Zurich that is funded by a government agency and governed by the GTC for Research Contracts.

##### 2.1.2.2. Exclusive rights of use for contracting parties

A contracting party pays ETH Zurich the direct costs for a research project as well as part of the indirect costs in the form of the infrastructure contribution (ISB) and the intellectual property surcharge (IP surcharge). Generally, this results in the contracting party being granted, within a clearly defined area of application, non-exclusive rights of use to all project results and exclusive rights to intellectual property rights resulting from the project, with the latter being regulated by way of license or by assignment. Intellectual property rights available for exclusive use are generally restricted to inventions for which a patent has been filed and to software.

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<sup>10</sup> Art. 52 (1) Financial Regulations (RSETHZ 245)

For example:

- Research project of a doctoral or post-doctoral student spanning several years and for which a company is paying all direct project costs as well as the ISB and IP surcharge to ETH Zurich.

### **2.1.3. Research contracts with ETH Zurich as the funder**

ETH Zurich pays a third party to carry out certain research activities. Often a relationship like this is part of a larger project in which ETH Zurich has obtained its funding from yet another party, e.g. a funding agency, and in turn passes on part of that funding to the third party (the sub-contractor of ETH Zurich). As long as the work of the sub-contractor is predominantly of a research nature, it does not generally qualify as the procurement of goods, services or construction services and the contract can be awarded directly without taking into account the special procurement law requirements. However, this must be examined on a case-by-case basis with the Purchasing Coordination before any contracts are awarded.

For example:

- ETH Zurich has a research contract with an international organisation and intends to transfer part of the research performance which ETH Zurich has undertaken to provide to the international organization, to a third party, by entering into a sub-contract with said third party.

Note: If the predominant nature of the performance by the third party is that of the delivery of goods (e.g. scientific equipment, software) or the provision of a construction service or a service (e.g. analyses), the performance does not qualify as research as defined by these guidelines and instead qualifies as procurement.

For procurement transactions within the framework of EU-funded projects, the requirements of the EU for subcontracting must also be observed.

Examples that qualify as procurement:

- In a research project, ETH Zurich requires additional scientific equipment and purchases this equipment from a supplier.
- In a research project, specific services not available at ETH Zurich are required and a service provider is engaged to perform these services (e.g. analytical laboratory).

### **2.1.4. Research funded by the public sector<sup>11</sup>**

ETH Zurich carries out a research project alone or together with one or several other contracting parties. A public-sector funding agency pays for the costs of ETH Zurich in full or in part ("public grant"). Surcharges are generally based on the respective funding conditions.

#### **2.1.4.1. Projects with support from SNSF**

SNSF has a whole range of funding instruments for providing support to researchers. Project funding applications can be made directly to SNSF. Applicants are notified directly of funding decisions.

#### **2.1.4.2. Projects with support from Innosuisse<sup>12</sup>**

Innosuisse supports universities and companies in carrying out joint research projects. The financial support by Innosuisse for innovation projects is regulated in a contract between Innosuisse and the universities involved (the Innosuisse Funding Agreement R&D- project) or is done for smaller projects (preliminary studies) by means of an innovation check credit. The universities and companies involved mutually regulate their rights and obligations, in particular in relation to intellectual property rights, confidentiality and publications, in a research contract (in the case of innovation projects referred to as

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<sup>11</sup> Art. 50 Financial Regulations, lit.a - f

<sup>12</sup> Version according to Executive Board decision as of 06.12.2022, in effect since 1.1.2023

“Innosuisse supplementary agreement” or “Agreement concerning the intellectual property and rights of use”).

The Innosuisse Funding Agreement can be signed by the corresponding budget officer on his/her own. The Innosuisse supplementary agreement requires approval through the signature of the VPKC<sup>13</sup> and is handled by the Research Contracts Group. The research contract for innovation check projects requires the approval by signature of the VPKC from a total value of CHF 50,000<sup>14</sup> (including the amount of the innovation check credit).

#### **2.1.4.3. Projects with support from Swiss government agencies**

In the case of a research project at ETH Zurich that is carried out with support from a Swiss government agency and for which the government agency is not granted any rights of use to the project results, ETH Zurich does not demand any surcharges.

If the government agency is granted rights of use to the project results, for example under the GTC for Research Contracts, the contract qualifies as a research contract pursuant to Art. 2.1.2.

#### **2.1.4.4. Projects with EU support<sup>15</sup>**

The European Union (EU) supports universities and companies under the Research Framework Programmes such as Horizon 2020. The financial support by the EU is regulated in an EU project contract between the European Commission and the universities and companies involved. The universities and companies involved agree on the project organisation as well as their rights and obligations, in particular in relation to intellectual property rights, confidentiality and publications, in a research contract (EU consortium agreement). In advance of an EU project contract, the costs and administrative details for EU projects are set out in an EU contract preparation form.

#### **2.1.4.5. Projects with support from other state funders**

In the case of other domestic, foreign or international state funders, the surcharges are based on the regulations set out in the corresponding contract, particularly in relation to the intellectual property rights resulting from the project, as well as in accordance with the respective conditions of the funding body. For grants from US funding agencies, the relevant regulations<sup>16</sup> of ETH Zurich must be observed. Information can be obtained from the Research Contracts Group and from EU GrantsAccess.

#### **2.1.5. Private-sector research funding (donations<sup>17</sup> and sponsorship)<sup>18</sup>**

A private funder makes a donation to an ETH entity for research purposes, for example in the form of cash or a non-cash contribution (e.g. a service), without demanding anything in return. Donations are often earmarked, e.g. for use in a specific research project (“private grant”). The funding body does not obtain any rights to use the project results and/or to any of the resulting intellectual property rights; the use of the funds is often documented by the delivery of reports and/or copies of publications to the funding body. A donation may come about through the acceptance by ETH Zurich of a unilateral letter

<sup>13</sup> Editorial adjustment due to partial revision of the Organisational Ordinance of 17.01.2020, in force since 01.01.2020

<sup>14</sup> Excluding any value added tax; see below Art. 4.2.1, 4.2.3.

<sup>15</sup> In the period of non-association or partial association of Switzerland to the EU Framework Programmes, contracts are concluded with the Swiss public sector as transitional measures. Internally, ETH Zurich treats these national contracts in the same way as EU contracts through EU GrantsAccess (contracts with SERI) or in the same way as SNSF projects for administrative purposes. For all projects starting after 1 January 2016, surcharges are distributed in the same way as for EU-funded projects under the respective framework agreement of the EU.

<sup>16</sup> Regulations on Projects from ETH Zurich Receiving Research Funds from US Funding Agencies (“Weisungen betreffend Umgang mit Beiträgen von US-Förderagenturen”, RSETHZ 442)

<sup>17</sup> Art. 51 Financial Regulations (RSETHZ 245) and RSETHZ 245.9

<sup>18</sup> Art. 52 (2) Financial Regulations (RSETHZ 245) and ETH Zurich Code of Conduct on Grants (“Verhaltenskodex der ETH Zürich für den Umgang mit Zuwendungen”, RSETHZ 245.9)

of commitment by a third party. In such a case, the donation must be accepted in writing by ETH Zurich in the form of a letter of thanks and the letter must be deposited in the ETHIS-e-file<sup>19</sup>.

In the case of sponsorship contracts in the area of research, a private funder gives ETH Zurich cash or a non-cash contribution to its research and ETH Zurich provides a publicity service in return. The sponsor is not granted any rights of use to results or intellectual property rights.

In the case of donations and of sponsorship, ETH Zurich does not demand any contribution to the indirect project costs.

Examples:

- Grant: A foundation or a company funds the implementation of a research project at ETH Zurich without demanding anything in return.
- Sponsorship: A company provides funding for a student project. In return, the company logo is added to the vehicle manufactured by the students in the project.

Larger donations that are not determined for a specific research project are, in principle, processed via ETH Zurich Foundation.

## 2.2. Service contracts with ETH Zurich as the contractor<sup>20</sup>

Service contracts in the area of research regulate the provision of a clearly defined activity by the ETH entities in the interest of a client utilising already existing methods and knowledge and in accordance with these guidelines. ETH Zurich would not carry out this work itself without being engaged to do so by the third party and does not have any direct interest in publishing the specific results of the service. Service contracts typically do not contain any regulations concerning intellectual property rights, as it is not expected that new intellectual property rights will result (with the exception of copyrights to reports). The remuneration for services must be based on a market rate, so that competition is not distorted in the case of services that could also be provided by the private sector<sup>21</sup>. In such cases ETH Zurich demands a contribution to the indirect project costs in the form of the service surcharge pursuant to Art. 5.2.2.3.

Examples:

- ETH Zurich uses an existing technology to determine certain properties of material samples on behalf of a company.
- A government agency engages ETH Zurich to carry out a study applying the unchanged General Terms and Conditions for Service Contracts of the Swiss Federal Government.
- Study where ETH Zurich is not permitted to publish the results.

## 2.3. Material transfer agreements (MTA)<sup>22</sup>

Material transfer agreements (“MTAs”) regulate the rights and obligations concerning the supply and use of materials such as cell lines, bacterial strains, plasmids, antibodies or other mostly chemical or biological substances as well as other types of material samples. ETH Zurich acts either as the supplying or the receiving party. The MTA must be executed in writing. With the exception of any out-of-pocket expenses for the production and supply of the material, there are generally no cash payments under an MTA.

<sup>19</sup> Adjustment according to Audit Recommendation R1832-03-001, Internal Audit ETH Board, Transition Review of 31.12.2018

<sup>20</sup> Art. 52 (1) Financial Regulations of ETHZ (RSETHZ 245)

<sup>21</sup> Art. 10 (2), Art. 34d (4) Federal Act on the Federal Institutes of Technology (“ETH-Gesetz”)

<sup>22</sup> Version according to Executive Board decision as of 06.12.2022, in effect since 1.1.2023

#### 2.4. Non-disclosure/Confidential disclosure agreements (NDA, CDA)<sup>23</sup>

Confidentiality agreements (often referred to as non-disclosure agreements “**NDAs**” or confidential disclosure agreements “**CDAs**”), govern the confidential treatment of information disclosed by one of the contracting parties to the other contracting party, as well as how such information may be used. Confidentiality agreements are commonly used to govern the exchange information and/or explore the possibility of collaboration. A confidentiality agreement alone, however, is not sufficient to enter into a collaboration; in such cases a project agreement is required which, in addition to non-disclosure, regulates the other points essential for the project (see Art. 3.) and usually serves as a substitute for the NDA. The obligation of confidentiality can be agreed unilaterally or mutually. The scope and objective of the exchange of information must be defined in as narrow and clear a manner as possible. The duration of the confidentiality undertakings must be limited to an appropriate period of time, and no rights to intellectual property that go beyond the objective of the NDA can be granted.

#### 2.5. License, option and assignment contracts<sup>24</sup>

License, option or assignment contracts govern the licensing or assignment of *existing* intellectual property rights of ETH Zurich to third parties, or an option to such. If necessary such rights can already be granted as part of a research contract. The allocation of income is carried out pursuant to the Exploitation Guidelines (“Verwertungsrichtlinien”)<sup>25</sup> of ETH Zurich. In the event of the granting of rights to existing intellectual property rights in return for a fee, the approval of the VPKC<sup>26</sup> by signature of the contract is mandatory, regardless of the amount of the expected income. Prior to the conclusion of a license agreement, the key negotiated terms of the license agreement may be recorded in a term sheet.

### 3. Contents of the contract

#### 3.1. Project description

Each project must be clearly defined and easily distinguishable from other projects by means of an appropriate project description, in terms of time, financing and content. The work to be carried out must be described clearly and unambiguously.

#### 3.1bis Project Budget and Payment Plan<sup>27</sup>

The agreed compensation for ETH Zurich must be set out in the contract together with the most precise payment plan possible (dates and tranches).

#### 3.2. Project results and intellectual property rights

By law, all rights to intellectual property that were created by persons in an employment agreement with ETH Zurich in the performance of their professional activities belong to ETH Zurich, with the exception of copyrights. In the case of computer programs created by persons in an employment agreement with ETH Zurich, the exclusive rights of use lie with ETH Zurich<sup>28</sup>.

Any deviating allocations of title and rights of use must be regulated contractually. In research contracts, it must be ensured that ETH Zurich can use its results (including results for which rights are granted to the contracting party) in all areas of application for research and teaching.

<sup>23</sup> Version according to Executive Board decision as of 06.12.2022, in effect since 1.1.2023

<sup>24</sup> Version according to Executive Board decision as of 06.12.2022, in effect since 1.1.2023

<sup>25</sup> RSETHZ 440.4

<sup>26</sup> Editorial adjustment due to partial revision of the Organisational Ordinance of 17.01.2020, in force since 01.01.2020

<sup>27</sup> Version according Executive Board decision as of 2.10.2018, in effect since 1.1.2019

<sup>28</sup> Art. 36 Federal Act on the Federal Institutes of Technology (“ETH-Gesetz”)



In the case of services, the specific results set out in detail in the contract and provided to the contracting party (e.g. measurement or analysis results, prototype, study, etc.) generally belong to the contracting party. Other results, e.g. improvements to the methods used, remain with ETH Zurich.

### 3.3. Ethics and laws

For each project, the relevant ethical rules as well as the laws and guidelines applicable to ETH Zurich must be observed. These include, in particular, the Federal Act on Data Protection<sup>29</sup>, the Swiss Federal Act on Animal Protection<sup>30</sup>, the Federal Act on Research involving Human Beings<sup>31</sup>, the corresponding ordinances, the Guidelines for Research Integrity and Good Scientific Practice<sup>32</sup>, the Regulations of the Ethics Commission<sup>33</sup>, the Code of Conduct on Academic Collaboration<sup>34</sup> and the ETH Zurich Code of Conduct on Grants<sup>35</sup>. Any authorisations required therein by the corresponding commission (e.g. Cantonal Ethics Commission, Animal Testing Commission and ETH Ethics Commission) must therefore be obtained. Furthermore, for projects with a foreseeable and relevant social or economic effect technology impact assessment must be made and the responsibility of ETH Zurich to society must be considered.

Other laws relevant for a project must already be taken into account during planning, such as procurement law and all applicable export control laws<sup>36</sup>.

### 3.4. Publications

In research contracts, the ability of the ETH entity to publish the research results must be guaranteed. For the purpose of safeguarding intellectual property rights (e.g. patent application), publications can be postponed for up to three months.

In the case of services, the specific results do not necessarily have to be published.

### 3.5. Confidentiality

Wherever possible, a duty of confidentiality should only be accepted for specific information which is marked as confidential in writing and such duty should be limited in time.

### 3.6. Warranty, liability and indemnification<sup>37</sup>

ETH Zurich does not make any warranty for its results, for example that the results can be exploited commercially or are free of third-party rights. The liability of ETH Zurich for damages should be limited to the statutory amounts. ETH Zurich will not assume any liability for damages from the use of the project results by the contracting party. In addition, the contracting party shall indemnify ETH Zurich for damages and claims asserted by third parties based on the contracting party's use of the results.

In research contracts, any warranty for achieving specific project results must be excluded.

<sup>29</sup> "Bundesgesetz über den Datenschutz" (DSG; SR 235.1)

<sup>30</sup> "Tierschutzgesetz" (TSchG; SR 455)

<sup>31</sup> "Humanforschungsgesetz" (HFG; SR 810.30)

<sup>32</sup> "Richtlinien für Integrität in der Forschung und gute wissenschaftliche Praxis an der ETH Zürich", RSETHZ 414

<sup>33</sup> "Reglement der Ethikkommission der ETH Zürich", RSETHZ 413

<sup>34</sup> "Verhaltenskodex für wissenschaftliche Kooperationen der ETH Zürich", RSETHZ 416

<sup>35</sup> "Verhaltenskodex der ETH Zürich für den Umgang mit Zuwendungen", RSETHZ 245.9

<sup>36</sup> Namely the Swiss Goods Control Act ("Schweizerisches Güterkontrollgesetz", GKG; SR 946.202) as well as case-specific foreign export control laws, e.g. of the USA

<sup>37</sup> Version according to Executive Board decision as of 06.12.2022, in effect since 1.1.2023

### 3.7. Contractual penalties

Contractual penalties must be excluded. If contractual penalties are agreed to and these are applied, they will be borne by the ETH entity that signed the contract.

### 3.8. Contract term

Contracts should generally be of limited duration, or there should be a right to termination with notice.

### 3.9. Applicable law and court of competent jurisdiction

Contracts are generally subject to Swiss law and have their sole court of competent jurisdiction in Switzerland, as the contractual services are generally performed by ETH Zurich in Switzerland (exceptions: EU contracts).

## 4. Responsibilities

### 4.1. Project proposals and quotations for work

Often in the case of orders for work or applications for grants a contract is executed simply by the acceptance of ETH Zurich's quotation for work by the other Party or by the acceptance of the grant conditions by ETH Zurich. As a consequence, in such cases before an offer or a proposal is submitted the budget officer must ensure that the information in the proposal or offer is complete and meets ETH Zurich's regulations.

### 4.2. Signature regulations

Contracts in the area of research are always executed on behalf of ETH Zurich, as individual ETH entities such as chairs, institutes, departments or centres are not independent legal entities.

The signature regulations also apply to contract amendments and project extensions.

#### 4.2.1. Sole signature by the budget officer

With respect to the following contracts in the area of research, the budget officer<sup>38</sup> in whose organisational unit the responsibility for the contract lies may negotiate autonomously with the contracting party and sign the contract on his/her own on behalf of ETH Zurich, taking into account all applicable regulations:

- Contracts with cash or non-cash benefits received by ETH Zurich below a total value of CHF 50,000<sup>39</sup> (excluding license, option and assignment contracts, Innosuisse supplementary agreements and EU contracts);
- Contracts with SNSF;
- Subsidy contracts with Innosuisse;
- Material transfer agreements with academic partners;
- Confidentiality agreements.

The deputy arrangement in Art. 27 Financial Regulations does not apply with respect to signing contracts in the area of research. Budget officers may authorize permanently employed scientific personnel that have a management function<sup>40</sup> in writing to sign material transfer agreements<sup>41</sup>.

<sup>38</sup> Pursuant to Art. 19 et seq. Financial Regulations (RSETHZ 245)

<sup>39</sup> Excluding any VAT; for the determination of the total value of contracts concluded for an indefinite period of time, Art. 4.2.3., first bullet point, shall apply accordingly.

<sup>40</sup> Pursuant to Art. 16 Verordnung über das wissenschaftliche Personal der Eidgenössischen Technischen Hochschule Zürich

<sup>41</sup> Version as of 29 November 2016, in effect since 1 January 2017

It is, however, recommended to include the Research Contracts Group or EU GrantsAccess in the preparation and negotiation of these contracts if there is any uncertainty or matters requiring clarification.

#### **4.2.2. Additional signature by the department head or member of the ETH Zurich Executive Board<sup>42</sup>**

In the case of contracts in the area of research with a contract term that extends beyond the period of employment of a professor (retirement, expiration of tenure, or resignation) who is the budget officer responsible for the contract, in addition to the signature of the budget officer, the signature of the appropriate department head or, in the case of non-departmental units, that of the responsible school board member is required<sup>43</sup>.

#### **4.2.3. Approval by additional signature by the Vice President responsible<sup>44</sup>**

The following types of contract in the area of research require the additional signature and approval of the Vice President responsible:

- Contracts with cash and/or non-cash benefits received by ETH Zurich with a total value of CHF 50,000 or more<sup>45</sup> (in the case of contracts concluded for an indefinite period of time, the sum of the cash and/or non-cash benefits to be expected within three contract term years shall be deemed to be the relevant total value within the meaning of this Art. 4.2.3);
- All license, option and IP assignment contracts (excluding Open Source Software)<sup>46</sup>;
- All Innosuisse supplementary agreements;
- Contracts in the area of research where the budget officer has a potential conflict of interest with respect to the contracting party. A conflict of interest arises for example when there is a close personal relationship to the contracting party, an advisory or directorship role is held at the contracting party or a related partner company, such as a management board role, a private advisory role or the ownership of company shares. The existence of a potential conflict of interest must be disclosed, in writing, to the offices involved in drawing up the contract and to the signatories *before* signing.

For these contracts, the Research Contracts Group (and/or EU GrantsAccess in the case of contributions from US funding agencies) must be included in the contract negotiations at an early stage. After negotiations have concluded, the contract is presented by the Research Contracts Group or EU GrantsAccess to the Vice President responsible for approval and signature. The Vice President responsible authorizes employees of the Research Contracts Group and of the IP and Licenses Group to sign contracts in accordance with appendix 2.

#### **4.2.4. Exclusive signature by the VPR<sup>47</sup>**

Regardless of the amount of the funding involved, EU contracts and contracts with contributions from US American funding institutions to research projects at ETH Zurich<sup>48</sup> must be signed solely by the VPR. Contracts must be sent for review to EU GrantsAccess at an early stage and are presented by EU GrantsAccess to the VPR for approval and signature, after the contract has been negotiated and written or electronic approval by the budget officer has been obtained. The VPR may authorize EU GrantsAccess leaders to sign contracts, including electronic signature LSIGN (see appendix)<sup>49</sup>.

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<sup>42</sup> Version according to Executive Board decision as of 06.12.2022, in effect since 1.1.2023

<sup>43</sup> Art. 42 (2) Financial Regulations

<sup>44</sup> Version according to Executive Board decision as of 06.12.2022, in effect since 1.1.2023

<sup>45</sup> Excluding any VAT

<sup>46</sup> Version as of 29 November 2016, in effect since 1 January 2017

<sup>47</sup> Editorial adjustment due to partial revision of the Organisational Ordinance of 17.01.2020, in force since 01.01.2020

<sup>48</sup> RSETHZ 442

<sup>49</sup> Version as of 2.10.2018, in effect since 1 January 2019

#### **4.2.5. Additional signature by the Research Contracts Group or by the IP and Licenses Group**

Material transfer agreements with non-academic contracting parties require the approval and signature of the Research Contracts Group or of the IP and Licenses Group.

#### **4.3. Responsibility for execution and management of the project in compliance with the contract and with the law**

In addition to the responsibilities set out in Art. 19 et seq. of the Financial Regulations, the budget officer who signs a contract in the area of research is also responsible for the execution of the contract in compliance with the guidelines as well as for compliance with the contractual duties, even if the Vice President responsible, the department head, the Research Contracts Group or the IP and Licenses Group approve a contract by co-signing. This includes the duty to ensure that:

- the performance of all of the ETH Zurich obligations as in the contract, including any reporting duties, financial commitments or “in kind” performance by ETH Zurich, is guaranteed;
- the implementation of the contractually agreed project is compatible with all other projects carried out under the responsibility of the budget officer at ETH Zurich and the projects do not overlap;
- the implementation of the contractually agreed project is ethically and morally justifiable;
- ETH Zurich has all rights to the pre-existing intellectual property and any intellectual property resulting from the project that the contracting party has rights to according to the contract. This includes the duty to ensure that all people working on a project for ETH Zurich, for example students, assign the corresponding rights to intellectual property to ETH Zurich in advance and in writing, e.g. by signing a corresponding project worker agreement;
- the confidentiality obligations and the defined procedure for planned publications – also of students involved – are observed;
- all approvals required for the project are in place, and applicable laws and guidelines are observed. These include, for example, approvals by the Ethics Commission for clinical trials, as well as compliance with the export control laws (Swiss law and any applicable foreign laws), procurement law provisions, data protection regulations, anti-corruption laws, environmental and industrial safety rules.

#### **4.4. Archiving contracts**

The budget officer ensures that original contracts are archived securely. The original versions of contracts that are (co-)signed by the Vice President responsible must be provided to the Research Contracts Group, the IP and Licenses Group or EU GrantsAccess, respectively, for archiving.

#### **4.5. Filing the contracts in the ETHIS-eDossier**

As soon as they are available, contracts in the area of research whose financial processing takes place via an SAP project<sup>50</sup> must be stored in the complete and signed version as a pdf file in the ETHIS-eDossier for the corresponding SAP project. This duty to file the contract also applies with respect to contract amendments and extensions. In the case of contracts that are (co-)signed by the Vice President responsible, this filing is carried out by the Research Contracts Group or EU GrantsAccess. For all other contracts, the budget officer is responsible for filing the contracts. To this end, the budget officer sends a corresponding pdf file to the Finance Desk, together with all of the information needed.

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<sup>50</sup> See Art. 5.1 below.

#### 4.6. Invoicing

The invoicing for amounts due from contracts in the area of research is the responsibility of the budget officer. For license, option and assignment contracts, this is thus generally taken care of by the IP and Licenses Group.

#### 4.7. Termination of the employment relationship of the budget officer

Budget officers who leave ETH Zurich or enter into emeritus status must ensure at an early stage that ongoing contracts in their area of responsibility are either prematurely terminated or that an extension is approved as defined by Art. 42 (2) Financial Regulations or that responsibility is transferred elsewhere within ETH Zurich in agreement with the contracting party within the meaning of Art. 106 (2) of the Financial Regulations. The Research Contracts Group or EU GrantsAccess must be informed, or, if necessary, involved at an early stage.

### 5. Financial matters<sup>51</sup>

#### 5.1. SAP Project and PSP Element

The financial management of a project with third parties must take place exclusively via SAP projects with PSP elements of ETH Zurich. A separate SAP project or PSP element, respectively, must be set up for all contracts with a total value of CHF 10,000 or more<sup>52</sup> received by ETH Zurich and the contract must be filed in the ETHIS-eDossier. Contracts with a total value of less than CHF 10,000 received by ETH Zurich can be processed via the cost centre of the ETH entity. In this case, signed copies of the contract must be kept by the budget officer. The retention period is 10 years<sup>53</sup>.

##### 5.1.1. Opening an SAP Project or PSP Element at the request of the budget officer

At the request of the budget officer, an SAP project with a PSP element is created for the following contracts:

- Contracts in the area of research with payments received by ETH Zurich with a total value of less than CHF 50,000<sup>54</sup>
- Research projects with funding from Innosuisse
- SNSF projects (SAP project, or PSP element, respectively, for ancillary contribution recipients).

For this purpose, the Finance Desk must be provided with an opening form and a copy of the fully signed contract. For Innosuisse projects, additional copies of the Innosuisse supplementary agreement and of the application must also be submitted. The Finance Desk will file the documents in the ETHIS-eDossier.

##### 5.1.2. Opening an SAP Project or PSP Element without a request

SAP projects or PSP elements are created for the following contracts without a request from the budget officer:

- Contracts in the area of research with payments received by ETH Zurich with a total value of CHF 50,000 or more<sup>55</sup>
- SNSF projects (SAP project and PSP element for main contribution recipients)
- EU contracts

<sup>51</sup> Version according to Executive Board decision as of 06.12.2022, in effect since 1.1.2023

<sup>52</sup> Excluding any VAT; for the determination of the total value of contracts concluded for an indefinite period of time, Art. 4.2.3., first bullet point, shall apply mutatis mutandis.

<sup>53</sup> Art. 151 Financial Regulations (RSETHZ 245) and RSETHZ 210

<sup>54</sup> Excluding any VAT; for the determination of the total value of contracts concluded for an indefinite period of time, Art. 4.2.3., first bullet point, shall apply mutatis mutandis.

<sup>55</sup> Excluding any VAT; for the determination of the total value of contracts concluded for an indefinite period of time, Art. 4.2.3., first bullet point, shall apply mutatis mutandis.

- Contracts with contributions from US funding agencies
- License, option and IP assignment contracts.

For contracts in the area of research with payments received by ETH Zurich with a total value of CHF 50,000 or more<sup>56</sup> and for all EU contracts, contracts with US funding agencies and for license, option and IP assignment contracts, the allocation of an SAP project with PSP element is initiated directly by the Research Contracts Group or EU GrantsAccess after the contract has been signed and approved by the Vice President responsible. In the case of SNSF contracts, SNSF reports new contracts to the Finance Desk, which then sets up the SAP project and PSP element.

Once the SAP project with PSP element has been opened, the budget officer receives a message asking him or her to confirm the correctness of the data entered and, if necessary, to supplement it.

### **5.1.3. Term of an SAP Project or PSP Element**

The term of the respective SAP Project or PSP Element is generally limited to the term of the contract. At the end of the contract term, the SAP project or PSP element must be closed in accordance with Art. 73 of the Financial Regulations. Settlement shall be made automatically in favour of or against the reserve ("Forschungsreserve"), unless the difference is reclaimed from the donor.

## **5.2. Project costs**

The project costs in research and service contracts comprises direct and indirect costs. For services that could also be provided by the private sector, the costs must be based on market rates so that competition is not distorted. VAT is based on the statutory provisions and must be taken into account in the budget.

The costs for EU projects are calculated in accordance with the respective current EU Framework. When budgeting an EU project, EU GrantsAccess must always be involved. The Finance Desk provides a EUR / CHF budget calculator for this purpose.

ETH Zurich accepts payments in different currencies. Currency risks for project-oriented research and service contracts whose budget is agreed in a foreign currency are hedged centrally. The regulation applies to all contracts whose contract date is 1 January 2019 or later<sup>57</sup>.

### **5.2.1. Direct project costs**

The direct costs of a project are made up of the total labour costs of the ETH employees involved in the project, the consumables as well as other costs incurred due to the project, for example items purchased specifically for the project or used in the project. This includes licenses for software used in a project with partners from industry, where the use of the campus license of ETH Zurich is prohibited.

### **5.2.2. Indirect project costs**

Indirect costs include any other costs incurred by ETH Zurich, such as the cost of the general infrastructure. These costs are often around the same amount as the direct costs. ETH Zurich requires that some of these indirect costs are covered by the surcharges payable by the contracting parties in addition to and together with the direct costs in certain types of contracts. Exceptions can be granted by the Vice President responsible. An overview of surcharges applicable to the different types of contracts and funding programmes can be found in Appendix 1.

For research and service contracts, the following surcharges must be applied:

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<sup>56</sup> Excluding any VAT; for the determination of the total value of contracts concluded for an indefinite period of time, Art. 4.2.3., first bullet point, shall apply mutatis mutandis.

<sup>57</sup> Version as of 13.3.2018, in effect since 1 January 2019

### 5.2.2.1. Infrastructure contribution

The **infrastructure contribution** (“**ISB**”) of 10% in addition to the direct costs must be budgeted and applied to all research contracts wherein the contracting party or another beneficiary receives some return on their investment in the project through the contract. Such a return for the contracting party comprises for example rights of use to intellectual property rights of ETH Zurich resulting from the project or an option to such. For projects funded by the public sector, the maximum surcharges that the funding agency is prepared to pay must be budgeted and charged.

### 5.2.2.2. Intellectual property surcharge

The **intellectual property surcharge** (“**IP surcharge**”) of 35% must be budgeted and charged in addition to the ISB for those research contracts under which the contracting party or another beneficiary purchases exclusive rights or title to intellectual property rights in advance from ETH Zurich pursuant to Art. 2.1.2.2. In such cases, the total surcharges on the direct costs is 45% and is due regardless of whether or not patents have been applied for.

### 5.2.2.3. Service surcharge

For services that could also be provided by the private sector, remuneration must be based on the market rate, for example by applying appropriate hourly rates. In any case, the deductions made from the total amount received on the PSP element correspond to a **service surcharge** of 10%. Exceptions apply to Technology Platforms<sup>58</sup>, which develop a price list approved by the Office of Research for services to be provided to internal and external customers for their services in compliance with the specifications of the "ETH Guidelines on Cost Allocation of Technology Platforms". Services provided to third parties using these price lists will be billed by the Technology Platforms via the billing tool and the VPR will grant the following exceptions: For services of the Technology Platforms billed in this way, no PSP elements shall be opened pursuant to Art. 5.1.2. and no service surcharge pursuant to this Art. 5.2.2.3. shall apply.

### 5.2.2.4. Internal distribution of the surcharges within ETH Zurich<sup>59</sup>

The indirect costs reimbursed by the contracting parties or funding agencies are accounted for 20% decentrally and 80% centrally. The central share is allocated to a central PSP element of ETH Zurich, the decentralized share to the infrastructure reserve of the corresponding department.

### 5.2.3. Special aspects

- If desired and agreed with the Research Contracts Group in advance, larger amounts of the funding of a project, which have been earmarked specifically for the purchase of materials or goods, as well as portions of the project budget that will be used to pay sub-contractors or that will be passed on to cooperation partners can be listed separately and budgeted without surcharges.

## 6. Legal basis

- Federal Act on the Federal Institutes of Technology (“ETH-Gesetz”, SR 414.110)
- Financial Regulations of ETH Zurich (“Finanzreglement”, RSETHZ 245)

<sup>58</sup> Art. 61 ETH Zurich Organisation Ordinance (RSETHZ 201.021)

<sup>59</sup> Version according to Executive Board decision as of 06.12.2022, in effect since 1.1.2023. This distribution applies to ISB, IP surcharges and service surcharges from contracts signed by the funding contracting party on or after 1.1.2023. For surcharges from research funding, the date of signature of the funding agency applies (e.g. Innosuisse Funding Agreement, EU Grant Agreement, SNF written decision). An exception is made for surcharges from the SNF, where the new distribution already applies to projects with a written decision date from 1.1.2022.

## **7. Entry into force**

These guidelines enter into force as of 1 January 2016 and apply to all contracts in the area of research that are concluded after that date.

3 July 2015

The President: Lino Guzzella  
Secretary General: Hugo Bretscher



## Appendix 1 to the Research Contract Guidelines of ETH Zurich – Overview of surcharges, signature rulings and SAP Project opening

As of: 1 October 2023

| Type of contract or project, funding agency   | Surcharges   | Signatures  | Opening SAP Project/PSP Element   |
|---|--|---|---|
| Research contract not involving cash payments   | Generally there is no mutual remuneration of costs.  | ETH entity  | not required  |
| Research contract involving cash payment for ETH; non-exclusive rights of use   | Surcharge of 10% of the direct costs as ISB.   | ETH entity; approval and co-signature by the VP responsible for amounts of CHF 50,000 or more   | By ETH entity; by the Research Contracts Group for amounts of CHF 50,000 or more                              |
| Research contract involving cash payments; exclusive rights of use  | Surcharge of 45% of the direct costs (10% as ISB and 35% as IP surcharge).   | ETH entity; approval and co-signature by the VP responsible for amounts of CHF 50,000 or more   | By ETH entity; by the Research Contracts Group for amounts of CHF 50,000 or more                              |
| Research funded by the public sector, incl.:  | Based on the regulations of the funding programme. Maximum surcharges possible must be budgeted.   |   |   |
| SNSF (without national transitional measures for EU contracts)  | Based on SNSF rules; max. 20% of the direct costs for certain projects and programmes, to be paid additionally   | Sole signature by ETH entity; Co-signature by the VPR for cooperation agreements with partners  | By SNSF for main contribution recipients, by ETH entity for ancillary contribution recipients                 |
| Innosuisse – innovation project   | Generally 15% of the direct costs are paid in addition.  | Funding Agreement solely by ETH entity; Suppl. agreement always to be approved through co-signature by the VP responsible                                     | By ETH entity   |
| Innosuisse – innovation check (preliminary study)   | According to Innosuisse rules; In the case of amounts paid by industry partners in addition to the innovation check credit, ISB and IP surcharge as for research contracts with cash flow.   | ETH entity; approval and co-signature by the VP responsible for amounts of CHF 50,000 or more   | By ETH entity; by the Research Contracts Group for amounts of CHF 50,000 or more                              |
| Swiss federal government agencies   | Based on the contract content. No ISB if at least non-exclusive rights of use remain with ETH  | ETH entity; approval and co-signature by the VP responsible for amounts of CHF 50,000 or more   | By ETH entity; for amounts of CHF 50,000 or more by the Research Contracts Group or by EU GrantsAccess (COST) |
| EU framework programmes from Horizon 2020 onwards and/or national transitional measures   | Based on the EU rules and/or the rules of the Swiss government agencies.   | Approval and signature by the VPR   | By EU GrantsAccess  |
| Grants from US funding agencies   | Surcharges based on the rules of the funding agency  | ETH entity as well as approval and co-signature by the VP responsible   | By EU GrantsAccess for public grants; by the Research Contracts Group for private grants                      |
| Private-sector research funding (donations and sponsorship)   | No surcharge   | ETH entity; approval and co-signature by the VP responsible for amounts of CHF 50,000 or more; approval by Executive Board for amounts of CHF 500,000 or more | By ETH entity; by the Research Contracts Group for amounts of CHF 50,000 or more                              |
| Service contract  | Deduction that corresponds to a surcharge of 10%; This shall also apply to contracts with Swiss federal agencies insofar as the General Terms and Conditions of the Confederation for Service Contracts are applied in unchanged form. | ETH entity; approval and co-signature by the VP responsible for amounts of CHF 50,000 or more   | By ETH entity; by the Research Contracts Group for amounts of CHF 50,000 or more                              |
| Material transfer agreement (MTA)   | No costs remunerated generally except for any out-of-pocket expenses. No surcharges.   | ETH entity; co-signature by staff of the Research Contracts Group or the IP and Licenses Group for non-academic contracting parties                           | not required  |
| Confidentiality agreement (NDA)   | Not applicable   | ETH entity  | not required  |
| License, option or assignment contract for existing intellectual property rights (regardless of the amount of expected income);<br>Term sheets preceding license agreements | Allocation of income carried out pursuant to the Exploitation Guidelines of ETH Zurich   | ETH entity and always approval and co-signature by the VP responsible   | By IP and Licenses Group  |

## Appendix 2 to the Research Contract Guidelines of ETH Zurich – Signature delegation for employees of the Research Contracts Group and of the IP and Licenses Group

As of: 1 October 2023

In the sense of a delegation of authority of the signing powers according to Art. 4.2.3 to employees of the Research Contracts Group and of the IP and Licenses Group, the VPR and the VPKC herewith regulate the signing powers as follows:

| Document / Contract type   | Authorized signatories representing the VPR/VPKC  |
|--|---|
| Research and service contracts pursuant to Art. 2.1 and 2.2 with payments and/or in-kind resources received by ETH Zurich below a total value <sup>60</sup> of CHF 500'000, but all Innosuisse supplementary agreements, regardless of the project volume of the Innosuisse Innovation Project | Head Partnerships for Innovation, Group Head Research Contracts Group, Team Leaders within the Research Contracts Group, each signature in twos |
| Associated approval documents according to section 5.1.2   | Head Partnerships for Innovation, Group Head Research Contracts Group, each with individual signature   |
| Term sheets preceding license agreements to define the essential terms of the license agreement  | Head ETH transfer, Group Head IP and Licenses Group, Deputy Group Head IP and Licenses Group, each signature in twos                            |

<sup>60</sup> Excluding any VAT; for the determination of the total value of contracts concluded for an indefinite period of time, Art. 4.2.3., first bullet point, shall apply mutatis mutandis.