

Guidelines Concerning Contracts in the Field of Research at ETH Zurich¹

(Research Contract Guidelines)

(This text is a translation. Only the German version is binding)

The Vice President for Research herewith issues the following guidelines on the basis of article 7 paragraphs 1 and 2 of the ETHZ Organisation Rules [Organisationsverordnung ETHZ] of 14 May 1998:

1. Preamble

ETH Zurich conducts research together with domestic and foreign partners from the private business sector, government organisations and universities. It is keen to promote direct exchange with the business sector and to facilitate and accelerate the implementation of research results in applications.

2. Scope

These Guidelines govern the conclusion of co-operation contracts between ETH Zurich and third parties in the field of research, and are binding for all employees (incl. professors²) of ETH Zurich.

They apply to all co-operation contracts governing joint research projects, in particular service contracts, sponsoring and donation contracts, licence and option contracts, non-disclosure agreements, material transfer agreements, CTI supplementary contracts and EU agreements.

They do not apply to

- agreements with the Swiss National Science Foundation (SNF), with the Commission for Technology and Innovation (CTI) of the Federal Office for Professional Education and Technology (OPET) or contracts with other universities or public research institutions, as long as no financial resources are exchanged,
- private contracts concluded by professors within the framework of secondary employment (e.g. consultancy activities) in accordance with article 7 paragraph 2 of the ETH Rules for Lecturers, where no ETH Zurich resources were used (provision is made for the approval obligation in accordance with article 7 paragraph 2 of the Rules for Lecturers).

3. Definitions

Third parties or contracting parties are domestic or foreign natural or legal entities, with the exception of ETH Zurich and its employees.

ETH partner is the corresponding teaching and research unit of ETH Zurich, e.g. a professorship.

Participant is a natural or legal entity who makes a contribution to an EU project and who on the basis of the contract has rights and obligations from and toward the European Union.

Intellectual property - IP comprises developments or results which can be given legal protection, such as inventions, software, designs or trademarks that are capable of being patented.

¹ "Richtlinien über Verträge im Bereich Forschung der ETH Zürich"

² Professor stands here and in the following for all units of *elected* professors at ETH Zurich.

VPR is the Vice President for Research at ETH Zurich.

ETH transfer is the technology transfer office of ETH Zurich.

Euresearch Zurich is the consultancy office for EU projects of the University and ETH Zurich.

4. Types of agreements

An overview of all types of contracts and their content is shown in Annex A.

4.1 Contracts involving financial considerations

(With the exception of supplementary CTI contracts and EU contracts, cf. sections 4.3 and 4.4. A schedule of definitions concerning these contract types and their settlement is shown in Annex B.)

Research contracts govern all research projects between ETH partners and third parties where a contracting party acts as the financial sponsor or supports these projects through other means. Each project must be clearly defined and differentiated from other research projects. As a rule, overall responsibility for the project lies with the ETH partner. The liability for research results must be excluded.

Service contracts govern work carried out by ETH Zurich for third parties involving in-house expertise, such as the completion of studies or the recording and evaluation of data. They are clearly defined and limited in terms of scope and deadlines. As a rule, service contracts do not result in the creation of intellectual property; where intellectual property rights are involved, these remain with ETH Zurich. A contract is not necessary where the total value of the final invoice is less than CHF 5,000; instead a written confirmation is sufficient.

Sponsoring contracts govern the donation of financial or material goods or services for research purposes by third parties (sponsor) to an ETH partner. The sponsor does not receive any rights in the project results, but is only informed about the progress of the sponsored project. In addition, the sponsor can be mentioned in ETH Zurich publications, or in other ways. No connection between ETH Zurich and a sponsor's product may be established. Sponsoring contracts may not contain any liability for research results.

Donation contracts are contracts concerning a donation of financial or material assets for a specific project or a research field where the performance of a reciprocal service is not stipulated. This also comprises financial contributions and grants, endowments or scholarships. Conditions imposed by the donor or benefactor may not impose any restrictions on the results, and free publication must be guaranteed. Unilateral attestations concerning a contribution shall be treated like donation contracts. In terms of intellectual property rights, the scholarship holders are treated the same as ETH Zurich employees.

Licence or option contracts permit the licensee to exploit intellectual property of the licensor in consideration of payment, or to reserve the right to exercise this right. This comprises exploitation such as the amendment, further development, utilisation, or transfer of the licence product. Licences can be issued for patents, expertise or software for example. The licensor shall retain ownership of the licensed intellectual property.

4.2 Agreements without financial considerations

Material Transfer Agreements – MTA govern the transfer at no cost of materials (e.g. biological material such as bacterial strains or plasmids, other material samples or chemical substances) for research purposes (expenses may be charged). ETH Zurich may act as donor or recipient. As a rule, the transferred material may not be used for commercial purposes and remains the property of the donor.

Non-disclosure agreements govern the exchange of confidential information with third parties for the purpose of assessing a possible co-operative project, for example. Intellectual property may not be assigned under a non-disclosure agreement.

4.3 Contracts with third parties in CTI projects

CTI supplementary contracts govern the relationship between the applicants who have concluded an contract with the CTI concerning the completion of a CTI project (CTI contract). In accordance with article 5 of the respective CTI contract, they must be concluded between ETH partners and the companies involved in addition to the conclusion of a CTI contract and govern the ownership of intellectual property, publication rights and liability issues.

4.4 EU agreements

EU project contracts are contracts reached between the European Union (EU) and the participants concerning a grant from the EU for the performance of an EU project within the EU framework programmes for research, technological development and demonstration.

EU consortium agreements govern the reciprocal rights and obligations of the participants of an EU project with respect to the implementation of the project. These are subordinate to a EU project agreement.

EU contract preparation forms are forms where the costs for EU projects are laid down. They serve as the basis for EU project contracts.

Collaboration agreements may be concluded between the partners of an EU project prior to the submission of a project proposal.

5. Basic principles for all contracts

It is recommended that ETH partners involve *ETH transfer or Euresearch Zurich* in all contractual negotiations from an early stage.

5.1 Formal aspects

Contracting party on the ETH side: the contracting party in all contractual agreements is always ETH Zurich; in other words, it is not a subunit or a professor. Only ETH Zurich is a legal entity, and legally valid contracts can only be concluded in its name. With the exception of EU contracts, ETH Zurich shall be represented by the responsible, elected professor or by an employee of ETH Zurich authorised by this professor in accordance with section 5.1(b).

Signatory rules:

(a) The following must be signed by the responsible elected professor, and signed and approved by the VPR:

- Research contracts involving CHF 50,000 or more
- Service contracts involving CHF 50,000 or more
- Sponsoring contracts involving CHF 50,000 or more
- Donation contracts involving CHF 50,000 or more
- Licence and option contracts
- CTI supplementary contracts

The following must be approved by *ETH transfer*:

- Material transfer agreements with commercial partners

(b) The following need to be signed only by the responsible elected professor:

- Research contracts involving CHF 50,000 or less (a series of separate contracts with the same partner and for the same project involving less than CHF 50,000 is not permitted)
- Service contracts involving CHF 50,000 or less (series contracts are not permitted)
- Sponsoring contracts involving CHF 50,000 or less (series contracts are not permitted)
- Donation contracts involving CHF 50,000 or less (series contracts are not permitted)
- Material transfer contracts with university partners or non-commercial research bodies
- Non-disclosure agreements *in the name of ETH Zurich*

Other ETH Zurich employees may sign as contracting parties, if the responsible elected professor in every instance (irrespective of the contractual sum involved) has declared his approval of the agreement in writing.

(c) The following must be signed by the VPR:

- EU project contracts
- EU consortium agreements
- EU contract preparation forms
- Collaboration agreements in conjunction with EU projects

(d) The following may be signed personally by the involved scientists, with only one signature required:

- Non-disclosure agreements *applying solely to the individual signor*.

Furthermore it must be noted that it may also be necessary to obtain the signature of the relevant department head in accordance with section 5.4, conflict of interest.

Reporting duty: All contracts and agreements which are concluded with third parties must be reported to the ETH Research Administration within 2 weeks following their signing, at the latest, in order to enable ETH Zurich to make a full statement of its third-party funds to its funding authority. This requires the submission of a complete signed contract together with annexes (or a copy thereof) to *ETH transfer* by the responsible professors. In the case of EU project applications, a copy of the application must be forwarded to *Euresearch Zurich*.

5.2 Financial settlement

The financial obligations arising out of a project with third parties shall be settled exclusively through an internal account at ETH Zurich set up for the specific project. The holding of bank accounts outside ETH Zurich is permitted only in exceptional circumstances and following clearance from the Finance Office. In the case of contractual sums under CHF 50,000, the Finance Office shall directly allocate the

ETH partners an account following presentation of a copy of a pertinent contract. In the case of sums of CHF 50,000 or more or licence or EU project contracts, the VPR shall order the allocation of an account following the approval of the contract.

Any possible deductions shall be performed by the Finance Office, while the entire remaining sum shall be available to the ETH partner for the implementation of the project.

The ETH partner shall notify the Finance Office when a project is completed. If a project ends with a surplus, this surplus shall be made available to the ETH partner for further research activities, and shall be credited to the free research reserve fund of the ETH partner (exception: EU projects). Deficits must be covered by the free research reserve fund of the ETH partner. The VPR may demand a written report on the financial standing of a project from the involved ETH partners at any time.

5.3 Contents

Contractual contents in general: The contents of the contract must comply with the statutory purpose of ETH Zurich (ETH Act [ETH-Gesetz], article 2).

Intellectual property: Intellectual property created by ETH Zurich employees within the framework of a co-operative project with a third party belongs essentially to ETH Zurich. As a rule, the contracting party will have first right of refusal on such intellectual property.

Intellectual property created collectively by ETH Zurich employees and the contracting party within the framework of a co-operative project belongs jointly to the parties in accordance with their contribution, and as a rule the contracting party will have first right of refusal on the share owned by ETH Zurich.

Should this lie in the interest of the ETH partner and ETH Zurich, the contracting party may acquire in advance the rights to the intellectual property arising out of the co-operative project. This shall be subject to the approval of the responsible professor and the VPR, and the contracting party must pay a surcharge (IP surcharge) in accordance with the tariff list (Annex C). Any intellectual property acquired in advance must be clearly defined.

In all contract types, ETH Zurich reserves the right to use the intellectual property created at ETH Zurich for non-commercial research and teaching purposes.

Publication: In all contracts with third parties, publication of research results by the ETH partner must be guaranteed. A publication can be delayed for up to three months to provide enough time for the protection of intellectual property (e.g. patent application), but may never be omitted.

Term: All contracts must be made for limited periods of time only, or must include a well-defined termination procedure.

Law and place of jurisdiction: As a rule, contracts with ETH Zurich are subject to Swiss law and have an exclusive place of jurisdiction in Switzerland, as the contractual performances are generally carried out by ETH Zurich and in Switzerland.

5.4 Further terms and conditions

Cost of legal proceedings and party costs: As a rule, possible costs from legal disputes arising out of a contract (cost of legal proceedings and party costs) must be borne by the ETH Zurich unit which caused these costs. Remuneration of these costs by ETH Zurich is performed on the basis of article 48 of the Personnel Code ETH Department [Personalverordnung ETH-Bereich] from 15 March 2001.

Intellectual property and financial exploitation: The Financial Exploitation Guidelines [Verwertungsrichtlinien]³ apply regarding the creation of intellectual property.

Conflicts of interest: When contracts are signed, professors must ensure that conflicts of interest are avoided, such as through co-operation with two different contracting parties in the same field or through the utilisation of non-authorized information or materials. If a professor is involved in the affairs of the contracting party in any form, such as in a consultancy capacity or seat on the executive board, then every contract concluded with this contracting party must also be signed by the relevant department head.

Competition with private sector: ETH Zurich shall apply standard market rates and conditions (article 10 paragraph 2 of the ETH Act [ETH-Gesetz]) if all services could be rendered equally by the private sector.

6. Project costs

The contracting party must be charged for the following project costs in accordance with the tariff lists in Annex C and D:

6.1 Costs in the case of co-operative projects with third parties (Annex C)

- Wages and ancillary wage costs caused by the project (incl. employer's contributions) of all ETH employees involved in the project, including PhD supervisors,
- Costs for the use of particularly expensive equipment or facilities (e.g. clean rooms),
- Costs for incidental materials, project-specific travel expenses etc.,
- Infrastructure contribution,
- Value added tax at the prevailing rate, and
- If necessary, a surcharge (IP surcharge), **if rights are assigned to the project partner in advance.**

The infrastructure contribution is not imposed under contracts with Swiss Federal Offices, if the rights to the resulting intellectual property are retained by ETH Zurich without restriction.

So-called transitory items (e.g. sums to pay subcontractors or substantial material purchases where the cost is passed on) must be shown separately in the budget and are not subject to the infrastructure contribution.

If rights are assigned to third parties in advance, the IP surcharge and the infrastructure contribution are added together.

6.2 Costs in the case of services (Annex C)

- Wage and ancillary wage costs at least in accordance with the tariff shown in Annex C,
- additional expenses such as laboratory use,
- Infrastructure contribution and
- value added tax at the prevailing rate.

³ "Guidelines for the Financial Exploitation of Research Results at ETH Zurich" ["Richtlinien für die wirtschaftliche Verwertung von Forschungsergebnissen an der ETH Zürich"] from 1 July 2003.

So-called transitory items (e.g. sums which serve to pay subcontractors or substantial material purchases, the cost of which is then passed on) must be shown separately in the budget and are not subject to the infrastructure contribution.

6.3 Costs in the case of EU projects (Annex D)

The cost of EU projects shall be determined in accordance with the EU guidelines. In the case of all EU projects, ETH partners must budget the overheads for the entire project costs in accordance with the EU guidelines.

6.4 Value added tax

Most contracts concluded with third parties (including sponsoring contracts) are subject to value added tax, as they entail a service in return for the contracting party. As a rule, donations are not subject to value added tax. Detailed rules on value added tax treatment are provided in the current ETH Zurich value added tax guide [Wegleitung Mehrwertsteuer der ETH Zürich]. (<http://www.fa.ethz.ch/private/mwst/wegleitung.html>)

7. Procedural matters

7.1 Concluding contracts (exception: EU contracts):

1. The involved ETH partners clear draft contracts through *ETH transfer*, whereby the services of the legal department can be engaged.
2. As a rule, the ETH partner forwards three original copies of the contract, signed by the contracting party and the elected professor, to *ETH transfer*. If there are more than one contracting parties, the number of original contracts increases accordingly.
3. *ETH transfer* obtains the approval of the VPR and, if payments are involved, arranges for an internal fund to be set up (cf. section 5.2, financial settlement).
4. *ETH transfer* retains and archives a complete signed original copy, and forwards the remaining copies as well as authorization [Verfügung] for the internal account back to the ETH partner (signatory professor).
5. The ETH partner keeps a copy on file, and distributes the remaining copy or copies to the contracting party or parties.

7.2 Concluding contracts in the case of EU agreements:

1. The ETH partners notify *Euresearch Zurich* as soon as an EU contract (cf. section 4.4) is received, and sends the contract to *Euresearch Zurich*.
2. *Euresearch Zurich* checks the EU contract. The matter is discussed with *ETH transfer* for consortium agreements.
3. *Euresearch Zurich* obtains the signature of the VPR.
4. *Euresearch Zurich* forwards the signed contracts either to the European Commission, the project co-ordinator or the ETH partners.

5. *Euresearch Zurich* arranges for a project fund to be opened with the Finance Office (cf. section 5.2, financial settlement).
6. *Euresearch Zurich* retains and archives completely signed original contracts. A copy is forwarded to the ETH partners.

8. Effective date and transitional rules

These Guidelines come into force on 1 July 2003 and apply to all contracts received by *ETH transfer* or concluded subsequent to this date. Contractual relationships concluded prior to 1 July 2003 shall be governed in accordance with the Research Contract Instructions [Forschungsvertragsweisungen] from 20 January 1988. All ongoing open-end contractual relationships shall be brought into line with the present Guidelines by 30 June 2006.

1 July 2003

Vice President for Research

Annex A Overview of contract types

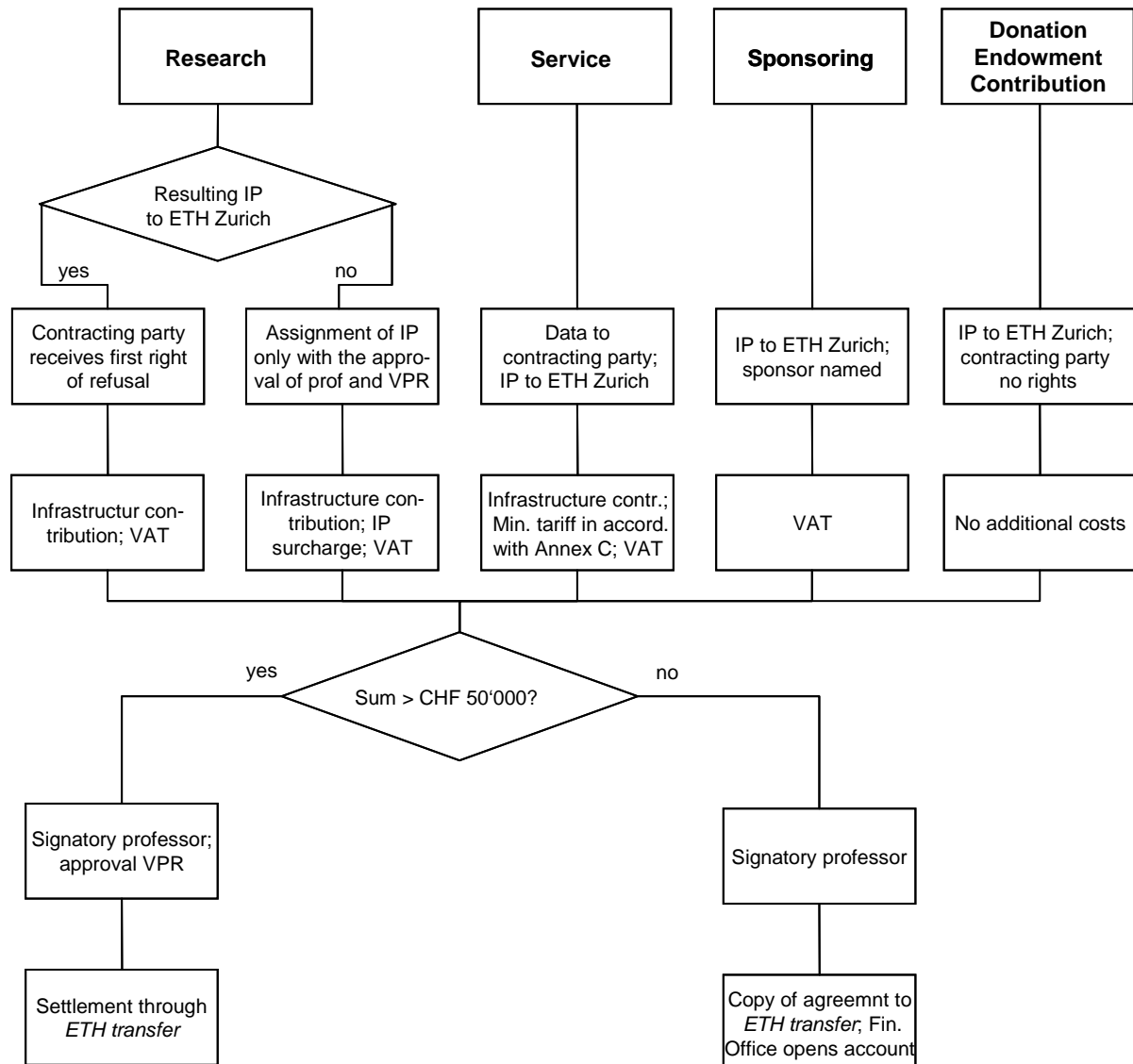
Contract type	Contents	Project costs	Signatory rules	Contact
Contracts with financial performances				
Research contract	<ul style="list-style-type: none"> - Project description - Allocation of the intellectual property - Performances of the partners, project costs and modalities of payment - Publications - Non-disclosure obligations - Liability matters - Duration of the contract - Choice of law and place of jurisdiction 	<ul style="list-style-type: none"> - Wage costs in accordance with valid tariff (Annex C) - Incidental materials, travel expenses etc. - Costs for equipment - Infrastructure contribution - Value added tax - Possible surcharge for IP assignment 	Signature of elected professor Approval by VPR (no approval required if overall costs < CHF 50'000)	<i>ETH transfer</i>
Service contract	<ul style="list-style-type: none"> - Project description - Allocation of the intellectual property - Performances of the partners, project costs and methods of payment - Publications - Non-disclosure obligations - Liability questions - Duration of the contract - Choice of law and place of jurisdiction 	<ul style="list-style-type: none"> - Wage costs in accordance with valid tariff (Annex C) - Additional costs such as laboratory costs etc. - Infrastructure contribution - Value added tax 	Signature of elected professor Approval by VPR (no approval required if overall costs < CHF 50'000)	<i>ETH transfer</i>
Sponsoring contract	<ul style="list-style-type: none"> - Project description - Sponsoring contribution and methods of payment - Rights of the sponsor - Duration of the contract - Choice of law and place of jurisdiction 	<ul style="list-style-type: none"> - No costing - Revenues in accordance with contract - Value added tax 	Signature of elected professor Approval by VPR (no approval required if overall costs < CHF 50'000)	<i>ETH transfer</i>
Donation contract	<ul style="list-style-type: none"> - Donated, endowed or contributed sum - With or without conditions (but no conditions with respect to research results or publications) 	<ul style="list-style-type: none"> - No costing - Not subject to value added tax 	Signature of elected professor Approval by VPR (no approval required if overall costs < CHF 50'000)	<i>ETH transfer/ Legal Department</i>
Licence contract Option contract	<ul style="list-style-type: none"> - Definition of licence object - Nature and scope of the licence - Licence fees and methods of payment - Liability questions - Non-disclosure - Duration of the contract - Choice of law and place of jurisdiction 	<ul style="list-style-type: none"> - No costing - Revenues in accordance with contract - Value added tax 	Signature of elected professor Approval by VPR	<i>ETH transfer</i>

Agreements without financial performances				
Material transfer agreement (MTA)	<ul style="list-style-type: none"> - Precise definition of the transferred material - Allocation of the rights to the material and further developments - Exclusion of commercial utilisation by recipient - Liability limitation 	none	Signature of elected professor Approval by <i>ETH transfer</i> (single signature of the elected professor, if only university partner, i.e. no commercial company involved)	<i>ETH transfer</i>
Non-disclosure agreement	<ul style="list-style-type: none"> - Reason for exchange of information - Definition of confidential information - Non-disclosure duration - Procedures in the event of breaches - Choice of law and place of jurisdiction 	none	Single signature of the involved parties (personal signature; elected professor signs on behalf of ETH Zurich)	<i>ETH transfer</i>
Contract type	Contents	Project costs	Signatory rules	Contact
Contracts in CTI projects				
CTI supplement	<ul style="list-style-type: none"> - Reference to CTI project - Allocation of the intellectual property - Publications - Non-disclosure obligations - Liability questions - Duration of the contract as CTI project contract - Choice of law and place of jurisdiction 	In accordance with CTI project contract	Signature of elected professor Approval by VPR	<i>ETH transfer</i>
EU agreements				
EU contract preparation form	<ul style="list-style-type: none"> - Contract preparation forms 	Overhead on top of the total project costs, in accordance with EU guidelines	VPR	<i>Euresearch Zurich</i>
EU project contract	<ul style="list-style-type: none"> - EU model contract 	Overhead on top of the total project costs, in accordance with EU guidelines	VPR	<i>Euresearch Zurich</i>
EU consortium agreement	<ul style="list-style-type: none"> - Project organisation - Allocation of the intellectual property - Publications - Non-disclosure obligations - Liability questions - Duration, choice of law and place of jurisdiction as in EU project agreement 	As a rule, none	VPR	<i>Euresearch Zurich</i>
Collaboration agreements	<ul style="list-style-type: none"> - Declaration of intent to execute an EU project 	As a rule, none	VPR	<i>Euresearch Zurich</i>

Annex B

Aid to decision-making with respect to for contracts with financial performances and their settlement

(excluding licence or option contracts, CTI supplementary contracts and EU agreements)



Annex C

Calculation of project costs in the case of research and service contracts

(Status July 2003, document periodically revised)

Cost type	Research contract	Service contract
Wage costs (incl. ancillary wage costs, full-time employment 100%)		
Administrative staff LK 14	CHF 99,000 p.a.	at least CHF 80 /hour
Technical staff LK 16	CHF 107,000 p.a.	at least CHF 90 /hour
Doctoral students LK 15	CHF 75,000 p.a.	at least CHF 90 /hour
Post-doc LK 18	CHF 92,000 p.a.	at least CHF 100 /hour
Project director / manager (senior assistant), LK 22	CHF 131,000 p.a.	at least CHF 150 /hour
Project director / supervisor (professor)	min. CHF 230,000 p.a.	at least CHF 210 /hour
Additional costs		
Special laboratory equipment (e.g. clean rooms, special analytical equipment)	cost basis	cost basis
Incidental materials	cost basis	cost basis
Infrastructure contribution on overall project costs excl. reported transitory items in accordance with section 6.1	10% ⁴	10 %
IP surcharge for advance assignment of IP to the contracting party On overall project costs excl. reported transitory items in accordance with section 6.1	35%	Not possible
Value added tax (cf. section 6.4)	7.6% on all invoiced sums	7.6% on all invoiced sums

The infrastructure contribution is distributed as follows:

- 1/2 to the ETH partner for partial coverage of the incurred infrastructure costs
- 1/2 to the ETH Research Administration to cover infrastructure costs and to support research and technology transfer at ETH Zurich.

The IP surcharge, imposed on advance assignments of intellectual property, is distributed as follows:

- 1/2 to the ETH partner for free disposal, for research and teaching at ETH Zurich,
- 1/2 to the ETH Research Administration to support research and technology transfer at ETH Zurich and for the possible compensation of ETH inventors in accordance with the Exploitation Guidelines.

⁴ The infrastructure contribution is not imposed in the case of research contracts concluded with Federal Offices, if the rights to the resulting intellectual property are retained by ETH Zurich without restriction (cf. Par. 6.1)

Annex D EU project costs

Cost type	Costs
Wage costs (incl. ancillary wage costs)	in accordance with EU guidelines
Additional costs e.g. incidental materials, materials of durable value, travel expenses	in accordance with EU guidelines
Incidental materials	in accordance with EU guidelines
Overhead	in accordance with EU guidelines on the total project costs

The overhead is distributed as follows:

- 1/2 to the professor responsible for the project, for free distribution to research and teaching activities at ETH Zurich
- 1/2 to the ETH Research Administration field to offset infrastructure costs and to support research at ETH Zurich

Until Switzerland becomes a full associate of the EU framework programmes, the Federal Office for Education and Science [Bundesamt für Bildung und Wissenschaft] (BBW) shall continue to finance project costs on behalf of Swiss participants. In addition to the EU contract, BBW and ETH Zurich are concluding a contract governing the allocation of these costs. As in the case of the EU contract, the ETH partner calculates overhead in accordance with the EU guidelines with respect to the overall project costs.