Guidelines for the spin-off companies at ETH Zurich (Spin-off guidelines)

dated 1 December 2019

The Vice President for Research and Corporate Relations, pursuant to Art. 10 (4) a) of the Ordinance Concerning the Organisation of the Zurich Federal Institute of Technology of 16 December 2003, hereby issues the following guidelines:

1 General

ETH Zurich has a statutory mandate spanning three core activities: education, research and the transfer of knowledge and technology to society. The entry of graduates into the workforce is an important means of fulfilling this mandate. Equally important is the development of new methods and technologies that are directly transferred to industry and society. The effective use of such new knowledge can support the creation of innovative products, services and jobs in Switzerland.

ETH Zurich also specifically supports the commercial exploitation of intellectual property (as defined in Art. 36 of the ETH Act) by its graduates and employees and the related creation of spin-off companies. The technology transfer office, ETH transfer, assists all ETH Zurich members interested in the creation of spin-off companies and provides advice on compliance with these Spin-off guidelines. ETH transfer ensures that the freedom of research and the scientific independence of ETH Zurich members is maintained and that potential conflicts of interest are disclosed or prevented. In this respect, an understanding by all ETH Zurich staff members of their responsibility for their own actions is the best prerequisite for working together in a constructive and ethically correct manner.

Setting up a company offers major opportunities, but also gives rise to risks. Founders benefit from potential profits, but they also bear the risk of any losses.

2 Scope of application

These guidelines govern the commercial exploitation of research findings obtained at ETH Zurich through the creation of spin-off companies. They apply to all employees and graduates of ETH Zurich and recognised ETH spin-off companies according to these guidelines.

Article 6 of these guidelines also applies to companies founded by employees and graduates on the basis of research findings obtained at ETH Zurich, which are not applying for the spin-off recognition according to Article 4 of these guidelines.

3 Definition of “spin-off company of ETH Zurich”

A “spin-off company of ETH Zurich” is defined as a legally autonomous partnership or corporation that is independent of ETH Zurich, has fulfilled the spin-off criteria according to Article 4.1 below and has been awarded the spin-off label by ETH Zurich pursuant to Article 5. These guidelines use the terms “spin-off company of ETH Zurich”, “spin-off” and “company” interchangeably.

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1 RSETHZ 201.021
4 Recognition as a “spin-off company of ETH Zurich”

4.1 Requirements

A legally independent partnership or corporation can be recognised as a spin-off company of ETH Zurich if it fulfils all of the following criteria:

a) The company commercially exploits a technology, software and/or know-how developed at ETH Zurich during research, teaching or other activities (see Article 2.1 of the Exploitation Guidelines), for example:
   - an intellectual property right (patent, patent application, design, brand, etc.);
   - a method, concept or device documented by a publication or piece of academic work;
   - a method, know-how or a device that is licensed and kept as a business secret;
   - a functional sample or prototype of a device;
   - source or object code of computer programmes (incl. open-source software).

The intended commercial exploitation must be of an innovative nature or must be related to an intellectual property right of ETH Zurich in accordance with Art. 36 (2) ETH Act;

b) At least one of the founders is a (former) employee, alumnus/a, student, doctoral student, post-doctoral student or professor of ETH Zurich. A founder in this sense is defined as a person who owns part or all of the company and who performs a central operational function (generally in management) or plays a strategic role within the company, and thus makes a significant contribution to the development of the company;

c) The business idea and the business plan are sound and sustainable;

d) The founder and the founding team think and act in an entrepreneurial manner;

e) Switzerland as a business location is expected to benefit if the company is successful; and

f) The company has been in existence for no longer than two years (according to the official entry in the commercial register) at the date of recognition.

4.2 Procedure and decision-making process

ETH transfer verifies and assesses whether the founders meet the criteria.

At least one face-to-face meeting is required during the assessment period between a founder and a person at ETH transfer responsible for the spin-off. It is also necessary to include the budget officer(s) from the organisational unit of ETH Zurich\(^2\) / group from which the technology, software and/or know-how to be commercially exploited by the company stems. Furthermore, the corresponding documentation (business plan, documents relating to intellectual property and/or publications of ETH Zurich, etc.) must be presented to ETH transfer in order to allow an assessment to be made.

The Vice President for Research and Corporate Relations makes the decision regarding recognition based on the recommendation of ETH transfer. There is no legal entitlement to be recognised as an ETH spin-off company.

Recognised spin-offs can use the label pursuant to Article 5 and can request support pursuant to Articles 7 to 10 below.

\(^2\) In most cases, this is the professor in charge of the organisational unit.
4.3 Revocation of recognition

In the event of a gross breach of these guidelines, failure to comply with agreements with ETH Zurich, intentional withholding of information regarding conflicts of interest pursuant to Article 6 below, or in the event of any other business practices that damage the reputation of ETH Zurich, the Vice President for Research and Corporate Relations can revoke the spin-off recognition, provided a previous warning has been issued granting appropriate time to heal the breach. All correspondence related to a revocation shall be done by registered mail. In such case, any right to use the label pursuant to Article 5 below and to support pursuant to Articles 7 to 10 is revoked with immediate effect.

5 Use of the spin-off label and the name or logo of ETH Zurich

5.1 Spin-off label and spin-off logo

Once recognition has been granted, the spin-off company is entitled to refer to itself as “A spin-off company of ETH Zurich” (or “Ein Spin-off-Unternehmen der ETH Zürich”) and to use the spin-off logo for as long as the link pursuant to Article 4.1 a) and b) is maintained and the company is still recognizable as an independent entity. If the spin-off company is acquired by another company and takes the name of the acquiring company, it is no longer entitled to use the ETH spin-off label or spin-off logo.

The spin-off logo can be used by the company in its general communications (e.g. on its company website, in its company brochures), but not in the marketing of individual products (e.g. product advertisements, product labels, product descriptions).

The spin-off logo in its current form is available from ETH transfer on request.

5.2 “ETH Zurich” name and logo

Companies may not use the ETH Zurich logo. If a company wishes to use the ETH Zurich logo, it must apply to Corporate Communications in advance and receive express permission to use the logo. The spin-off company may use the name “ETH Zurich” (but not the logo) only with regard to a reference to a development contribution from or by a specific collaboration with ETH Zurich, which is evidenced in writing.

6 Conflicts of interest

When founding a spin-off company, employees and/or professors have an equal obligation to disclose to ETH transfer any potential conflicts of interest between their involvement in the company and their activities at ETH Zurich. A distinction is made between a person’s ownership (e.g. an equity participation in the company) and role (e.g. Scientific Advisor, Board of Director mandate) in relation to a spin-off company. The founders must also disclose to ETH transfer any family ties between research groups and the spin-off to be created (e.g. if the partner, brother, sister is a co-founder of the spin-off company).

For any roles giving rise to a potential conflict of interest, professors require approval from the President\(^3\) and all other employees require approval from their line manager\(^4\). Particular consideration must be given to stakes in, cooperations with, operational roles or board of directors’ mandates in spin-offs, which impact professors and employees in both their professional function at ETH Zurich and their personal interests in the company. It must be ensured that the rights of ETH Zurich to

\(^3\) RSETHZ 501.2

\(^4\) ETH Domain Personnel Ordinance Art. 56 and Rules on Secondary Employment for all Employees of ETH Zurich (in progress).
intellectual property are not breached or abused and that public funding and other resources (infrastructure, materials, personnel) are not misused.

6.1 Role and ownership of founders of spin-off companies

If a spin-off company wishes to use intellectual property of ETH Zurich that is protected or not publicly available within the meaning of Art. 4.1 a), a corresponding licence agreement must be concluded in accordance with Art. 36 ETH Act (see Art. 10), irrespective of whether such intellectual property was created by the founders themselves in the course of their employment at ETH Zurich.

Founders working at ETH Zurich can hold a part-time position at ETH Zurich after the company is founded for up to a maximum of two years in accordance with the HR regulations applicable at ETH Zurich as well as being operationally involved in their spin-off company. If there are overlaps between the activities performed by the founders for the company on the one hand and for ETH Zurich on the other hand, agreements must be concluded in accordance with Art. 6.2 and clear job descriptions must be drawn up for both roles. Both job descriptions must be in writing and signed, before being sent to ETH transfer and the HR department. An extension of employment beyond the two-year period is only possible within the applicable time limit for maximum length of employment at ETH Zurich in accordance with Art. 17 b) para. 2 ETH Act and only in justified exceptional cases. Such applications must be presented by the responsible personnel manager and the budget officer to the Vice President for Research and Corporate Relations for approval. In the case of businesses that are active in fields very closely related to the work of ETH Zurich, in particular where there is overlapping research and thus potentially unregulated exchange of know-how, the employees of the spin-off company must move out of the premises of the involved research group at ETH Zurich as soon as possible.

The role for professors in a spin-off company with the least potential for a conflict of interest is that of a Scientific Advisor without any shareholding in the company.

Professors who wish to become members of an ETH Zurich spin-off company’s board of directors or executive management require the prior authorisation of the President of ETH Zurich in order to take up such a position (Art. 6 ETH Professorial Ordinance). The same applies to professors who wish, in addition to their full time employment at ETH Zurich, to carry out other activities in the spin-off company which together with other secondary employments account for more than one day per week in total (Art. 6 para. 2 and 3 ETH Professorial Ordinance).

It is permitted for professors to participate in the company as private individuals using their private funds either directly (e.g. via shares) or indirectly (e.g. via options, convertible loans). The amount of the participation that a professor may have in a spin-off company at the time of incorporation is limited to a maximum of 20%. If more than one professor participates in the spin-off company, the overall participation of all professors is limited to a maximum of 30%. Furthermore, the professor or professors may not hold any preferential rights vis-à-vis the other founders at company incorporation. If there are no investors involved, it is recommended that the operational team owns the majority of shares at company incorporation.

In accordance with Art. 2, professors must report all participations in companies to the Executive Board for the attention of the Vice President for Research and Corporate Relations (via ETH transfer). ETH transfer ensures that the President and the Vice President for Finance and Controlling are informed. Professors are responsible for fulfilling the reporting obligation and must do so before the company is founded. In justified exceptional cases (e.g. upon the professor reducing their level of employment, imminent emeritus status or in the case of a professor founding a company that only

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5 See Art. 4.1 b) for the definition of a founder
6 RSETHZ 501.2
7 SR 172.220.113.40
provides consultancy services), the Executive Board of ETH Zurich may authorise a higher participation at the request of the Vice President for Research and Corporate Relations.

Professors are not permitted to gear their research to the needs of the spin-off company or enable access to unpublished research results to deliberately create a competitive advantage for the company that is not available to other companies.

This does not apply to research findings that have been licensed to the company pursuant to Art. 10.

6.2 Cooperation and conflicts of interest

Subject to the Research Contract Guidelines of ETH Zurich\(^8\), a spin-off company may work on joint projects with ETH Zurich that are relevant for both the scientific research of ETH Zurich and the research and development work of the spin-off. These cooperation projects are governed by agreements which, in particular, set out the rights to the project results and their commercial exploitation. In the event of a conflict of interest, the Research Contract Guidelines provide for special signature rules applicable to such agreements.

Conflicts of interest include, for example, a close personal relationship with the spin-off or an executive function in the spin-off company (e.g. a board of directors’ mandate, a private advisory mandate or the ownership of shares in the company).

7 Support

While ETH Zurich encourages entrepreneurship in general and the creation of spin-off companies in particular, any favourable treatment that leads to market distortion or conflicts with the guidelines of ETH Zurich must be avoided. ETH Zurich does not grant any subsidies to ETH spin-offs.

ETH Zurich can support its recognized spin-off companies in the initial phase, which for the founders is often characterised by a period of transition from being employed at ETH Zurich to entering self-employment, by means of different contractually agreed measures for a period of time limited to a maximum of three years. These include but are not limited to the rent of offices and laboratories, communication and IT services (e.g. Internet), and the use of infrastructure (e.g. specialised equipment) from ETH Zurich under preferential conditions.

When licensing intellectual property of ETH Zurich to spin-off companies and in the case of cooperation agreements between ETH Zurich and its spin-off companies, licensing terms will be applied in accordance with ETH Zurich’s practice, taking into account the negative free cash flow in the initial years after incorporation.

Support for the spin-off companies by ETH Zurich (e.g. through use of infrastructure at preferential rates) that extends beyond a period of three years after incorporation, or the general licensing of intellectual property at below market rates, is not permitted. For this reason, any support activities and preferential licensing rates will be limited in time in the respective agreements.

7.1 Office and laboratory space

For the first two years after incorporation, spin-off companies can rent office and laboratory space at ETH Zurich (including external locations, e.g. Technopark Zurich), if available. Provided that ETH Zurich does not need the space for internal purposes, existing rental agreements can be extended by an additional year (i.e. a maximum of three years in total). However, there is no right for a recognised spin-off company to rent office or laboratory space from ETH Zurich. The space that an ETH spin-off

\(^8\) RSETHZ 440.31
may rent within the research groups is limited to the space required for a maximum of three full-time equivalent staff.

Any spin-off company that rents space at ETH Zurich requires liability insurance and is responsible for compliance with the relevant security regulations. The Safety, Security, Health and Environment department at ETH can assist spin-off companies with compliance.

The space is rented through the Real Estate Management department of ETH Zurich. The following steps are taken upon initial lease and extension:

a) The company or the company founder (if the company has not yet been founded) makes an application to the responsible person at ETH transfer, wishes or agreements with the professor and/or institutes can be taken into account. The founder must obtain consent from the institute and the department. Request from spin-offs for structural modifications cannot be considered.

b) If the company wishes to use a workspace in the ETH Innovation and Entrepreneurship Lab (ieLab) or Wyss Zurich, the founder must obtain approval from the ieLab manager or from the management of Wyss Zurich, respectively.

c) The person at ETH transfer responsible for the spin-off company reports the space requirements to the Real Estate Management department and confirms at the same time that the founder or the company is authorised to lease the corresponding space as a spin-off.

d) The Real Estate Management department concludes a rental agreement with the spin-off company. It also issues corresponding invoices. The academic departments, institutes or professorships are not entitled to any portion of the rental income, even if the rented space is allocated to any of their units.

7.2 Domicile and lease terms at ETH Zurich

For company addresses at ETH Zurich (containing “c/o ETH Zurich”), the commercial register requires a domicile acceptance declaration from ETH Zurich (this is excluded for the address in Technopark). If required, ETH Zurich will issue such a domicile acceptance declaration in the name of the company. The domicile acceptance declaration is issued by the Head of the Legal Office at ETH Zurich upon request from ETH transfer. This is possible before a lease agreement is signed and/or the company is founded provided that the spin-off criteria pursuant to Art. 4 are met and the following responsible parties are in agreement:

a) For space in an institute of ETH Zurich: head of institute and head of department

b) For workspaces in an ieLab or Wyss Zurich: manager of the ieLab or Wyss Zurich

c) For all other spaces: in coordination with the Real Estate Management department.

The rent is based on the rate for customer group 2 of ETH Zurich’s lease model, and includes incidental costs, cleaning costs and basic furniture. Each spin-off company pays rent from the month of incorporation. If a spin-off company grows and requires additional space, it must notify the portfolio management team in the Real Estate Management department in good time (i.e. at least two months in advance) so that the rental agreement and the rental fee can be adjusted accordingly. Companies may not occupy office or laboratory space without the rental agreement being adjusted.

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9Pursuant to the Executive Board resolution dated 14 December 2010, lease model for leasing to partner organisations of ETH Zurich and external parties.
Companies supported by Wyss Zurich which are not ETH spin-off companies, can have their domicile in the Wyss building of ETH Zurich (WEH). However, these companies (e.g. spin-off companies of the University of Zurich or companies based on “Associated Projects”) are subject to the same terms and conditions as ETH spin-off companies (rent, term of lease, etc.). ETH Zurich (portfolio management team of the Real Estate Management department) as the contracting party collects the rent.

Further administrative details concerning the rental arrangement can be agreed between ETH transfer, the Real Estate Management department and, where applicable, the units concerned.

7.3 Communication and IT services

Spin-off companies that rent space from ETH Zurich pursuant to Art. 7.1 may register for IT services from ETH Zurich to get internet access for the duration of their lease. As a rule, software and other infrastructure licensed to ETH Zurich for research and teaching purposes can not be used by spin-off companies. The cost of the Internet connection is not included in the rent and is charged separately. If network services are provided for the spin-off, all users at the company are subject to the ETH Zurich Acceptable Use Policy for Information and Communications Technology (BOT) 10.

The spin-off appoints and announces a contact person to the IT Services department at ETH Zurich. The spin-off must use external telephone numbers and its own domain name (name of the spin-off company) in its external communications, even if it is leasing space from ETH Zurich and obtaining network services from the IT Services department. The IT Services department sets out the precise details of these arrangements in separate agreements with the spin-off company with the involvement of ETH transfer.

7.4 Use of infrastructure

The use of infrastructure (devices, equipment etc., but not office or laboratory space or IT services) allocated to a professorship at ETH Zurich is regulated in an infrastructure agreement with ETH transfer.

Financial compensation for the shared use of the infrastructure is invoiced to the spin-off company by the organisational unit of ETH Zurich and credited to a “Use of infrastructure” PSP element. ETH Zurich’s Accounting department credits half of this income to the responsible organisational unit and half to the Executive Board.

In principle, service-oriented technology platforms of ETH Zurich which also provide services to external companies (e.g. EPIC, FGCZ, FIRST, NEXUS, ScopeM) treat spin-off companies as external companies. The platforms are free to grant discounts to spin-off companies for three years after incorporation, provided these discounts apply equally to all spin-off companies.

7.5 Purchases at ETH laboratory shops

For the first three years after incorporation, all spin-off companies can purchase consumables from the internal laboratory shops (D-BIOL, D-BSSE, D-CHAB and D-PHYS shops). The order and delivery processes depend on the conditions offered by the individual shops. After three years, spin-off companies are no longer permitted to purchase goods at laboratory shops.

7.6 Safety, Security, Health and Environmental Management

All spin-off companies that rent space at ETH Zurich are subject to the organisational rules of ETH Zurich and are responsible for compliance with the statutory requirements in the areas of safety, security, health and environmental management. Founders may request advice from the Safety,
Security, Health and Environmental Management department and must notify this department of the person who is responsible for security-related questions within the spin-off.

7.7 Hazardous waste disposal

Spin-off companies that rent space at ETH Zurich can dispose of hazardous waste to the hazardous waste disposal facilities at ETH Zurich. The costs for this service are set out in the rental agreement and are charged in addition to rent.

7.8 ASVZ and other services

The founders and employees of all ETH spin-off companies are eligible to become members of the Zurich Academic Sports Association (ASVZ) in the “Employees ETH Zurich” category for a period of three years after incorporation.

Other services, for example technical workshop services, require an agreement between the spin-off company and the respective organisational unit of ETH Zurich. The service providers are free to grant discounts to spin-off companies for three years after incorporation, provided that these discounts apply equally to all spin-off companies.

8 Advice from ETH transfer

ETH transfer advises all ETH Zurich members interested in setting up a spin-off company with regard to founding a company.

The advice constitutes an additional non-binding opinion, and any decision derived from such advice lies in the sole responsibility of the company founder.

ETH transfer will keep confidential any plans about founding the company and any business information (such as the business idea, business plan, financial plan, licensing terms and conditions, etc.) that are provided by the spin-off company to ETH Zurich as part of the spin-off recognition process, negotiating and monitoring licence agreements, providing advice or other transactions concerning the spin-off company or the founders.

However, ETH transfer can – on a confidential basis – provide the organisational units of ETH Zurich directly affected by the company incorporation with information needed to fulfil their tasks.

ETH Zurich is also obliged to disclose information to its higher-ranking authorities (e.g. ETH Board) upon instruction to do so.

9 Funding

ETH Zurich does not offer any direct funding instruments to spin-off companies. Instead, it supports companies by means of indirect benefits such as the use of real estate and infrastructure, licensing of intellectual property etc. in accordance with these guidelines and the Exploitation Guidelines. However, it may participate in spin-off companies in accordance with Article 11.

The Pioneer Fellowship and similar instruments serve to fund researchers with the potential to become entrepreneurs and to fund the further development of promising technologies at ETH Zurich. Any findings that result from a Pioneer Fellowship grant are the property of ETH Zurich. The grant does not constitute an investment in a spin-off company.

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11 RSETHZ 440.4
ETH Zurich will also inform its partner, the venture capital fund Venture Incubator (VI)\textsuperscript{12} about all companies that have received the label according to Article 4. It is in the discretion of the spin-off company or the founders to obtain financing by VI or other investors. The spin-off company is not entitled to any funding from VI, nor is it obliged to accept an offer from VI.

10 Licensing and donations

10.1 Licensing

Licensing of intellectual property is subject to the guidelines for the commercial exploitation of research findings at ETH Zurich (Exploitation Guidelines\textsuperscript{13}).

In particular, patent applications, patents, software, material, confidential know-how (trade secrets), brands and designs can be licensed. Their use by any spin-off company without a valid licence or other authorization by ETH Zurich is not permitted. This also applies to results from Pioneer Fellowships, Wyss Zurich projects or other similar instruments (e.g. Gebert Rüf Foundation or Bridge Grants from Innosuisse/SNF, etc.) which fund project participants at ETH Zurich.

The spin-off company must compensate ETH Zurich in accordance with the value of the licensed intellectual property. The customary market value is determined and the terms and conditions of the compensation are negotiated between ETH transfer and the spin-off company. The final decision of whether the licence is concluded according to the terms and conditions negotiated, is the responsibility of the Vice President for Research and Corporate Relations at the request of ETH transfer in accordance with the Exploitation Guidelines.

10.2 Donations

In cases where the company does not require a licence from ETH Zurich, ETH Zurich welcomes an appropriate donation to the ETH Foundation if the company's business is successful. This applies in particular to spin-off companies whose business idea is based on open source software or non- licensable know-how from ETH Zurich.

11 Participation of ETH Zurich in spin-off companies

ETH Zurich can participate in spin-off companies within the scope of the ETH Domain Participation directives\textsuperscript{14} under the following conditions:

a) Pursuant to the licence agreement as part of the licence fees or for preliminary investments (e.g. costs spent on patent applications) in order to reduce up-front payments for the spin-off company. Use of the income from such participations is regulated by the Exploitation Guidelines of ETH Zurich;

b) In the case of particular strategic interest of ETH Zurich, generally with cash payment at nominal value. Funds are provided by the Vice President for Research and Corporate Relations. Participations are managed centrally under the Vice President for Research and Corporate Relations and by the Participation Monitoring unit of the Vice President for Finance and Controlling.

c) A combination of a) and b), e.g. for projects funded by Wyss Zurich from which a spin-off company is founded.

\textsuperscript{12}The venture capital fund Venture Incubator (VI) Partners was founded at the initiative of McKinsey & Co. by numerous reputable Swiss companies together with ETH Zurich. There is a contractually agreed exchange of information between ETH Zurich and VI. Details are available from ETH transfer on request.

\textsuperscript{13}RSETHZ 440.4

\textsuperscript{14}RSETHZ 440
The decision on participating in a spin-off company is the responsibility of the Executive Board and/or the Vice President for Research and Corporate Relations (Art. 6 para. 2 Participation directives). The latter also makes any decisions about selling these participations.

12 Entry into force

These guidelines enter into force on 1 December 2019 and replace the previous guidelines dated 1 November 2013. They apply to all new companies that are being founded in accordance with Article 2 and to all recognised ETH spin-off companies. The restrictions on equity participations in accordance with Article 6.1 apply to all companies founded after 1 December 2019.

Prof. Dr. Detlef Günther
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