

## **EIT DIGITAL 2018 TEMPLATE SUBGRANT AGREEMENT (Financial Support to Third Parties)**

This Agreement for providing financial support to third parties (subgrant), hereinafter referred to as the "Agreement", is entered into by and between:

... ("EIT Partner"), an organisation under the laws of ..., having its registered office at ..., herein represented by ...

And

... ("Subgrantee"), an organisation under the laws of ..., having its registered office at ..., herein represented by ...

Hereinafter individually or collectively referred to as "Party" or "Parties".

Whereas the EIT on the one hand and EIT Digital IVZW, having its registered office at Rue Guimard 7, 1040 Brussels, hereinafter referred to as "KIC LE", on the other hand have entered into a Framework Partnership Agreement effective as from January 1, 2016 ("**FPA**"), establishing a long term cooperation ('framework partnership'), and setting out its terms and conditions and the general terms and conditions and rights and obligations applicable to the specific grants that may be awarded by the EIT for specific actions under the framework partnership;

Whereas the EIT has awarded a grant for the Relevant Year, hereinafter "the Grant", to the KIC EIT Digital and the KIC LE has entered into the Specific Agreement ("SGA") with EIT;

Whereas the EIT Partner has acceded as a KIC Partner to the FPA and SGA by signing the Accession Form in the form attached as the Annex 4 to the FPA or is listed as a Linked Third Party in Annex 5 to the FPA;

Whereas the EIT Partner is willing to provide financial support under the funding received from EIT to the Subgrantee for certain innovation, research or education activities carried out by the Subgrantee and Subgrantee is willing to receive such funding under the terms and conditions of article 20 of the FPA and article 13 of the SGA and the terms and conditions of this Agreement;

Now therefore it has been agreed as follows:

## 1. DEFINITIONS

- 1.1 **KIC added value Activity** means an innovation, research or education activity that supports the objectives of the EIT and EIT Digital, partially or wholly funded by EIT under the framework of the FPA and applicable Annual Grant Agreement carried out by EIT Digital and/or EIT Partners, or by them in co-operation with other entities.
- 1.2 **Subgrant** means the financial support to be given to the Subgrantee in accordance with the terms and conditions of article 20 of the FPA and article 13 of the SGA and the terms and conditions of this Agreement and the description of the KIC added value Activities in the Business Plan and as described in the so-called Internal Agreement. For clarity: a subgrant is not a subcontract. This means that this agreement is not governed by a procurement or invoicing process.

## 2. TERMS AND CONDITIONS FOR THE SUBGRANT

- 2.1 The Subgrantee will take part in the following KIC added value Activity: [Action Line ID: aaa Activity ID: nnnnn], implemented under task identifier: [Task ID: nnnnnAxxxx] by EIT Partner [Partner name, Partner-ID (Pnnn)] as further defined in Annex I to this Agreement and in accordance with the state of the art.

The Subgrantee shall carry out the tasks according to Annex I from ..... until ..... (dates to be added) at the latest and shall report to the EIT Partner on the activities' progress in regular intervals.

Such reports shall contain detailed information on the results generated by the Subgrantee (if any).

The EIT Partner shall be entitled to include the main issues regarding the KIC value added Activities according to Annex I in its reporting towards EIT and EIT Digital. Publications of such main issues shall require the Subgrantee's prior information.

- 2.2 The EIT Partner shall give financial support for the KIC added value Activity carried out by the Subgrantee, within the limits specified by the SGA. The maximum amount of subgrant under this Agreement is XXX EUR but shall in any case never exceed 60,000 EUR.

The Subgrantee shall be entitled to claim eligible costs for the KIC added value Activities in accordance with the following: Such eligible cost are travel costs, accommodation costs, remuneration costs (hourly rates based on actual direct costs & timesheets) and a flatrate Indirect Cost of 25% over A Personnel and D Other Direct Cost as defined in the SGA. For the full overview of the eligibility of the costs incurred, reference is made to Article 5 of the SGA. The financial support shall take the form of a reimbursement of the proportion of the eligible costs of KIC added value activities actually incurred.

- 2.3 The Subgrantee shall provide a cost report to EIT Partner. The Subgrantee shall use a cost and financial reporting template to be provided by the EIT Partner. The following elements should at least be included in these cost report templates:

- a) A description of the KIC Added Value Activities supported and implemented in accordance with Annex I;
- b) A financial statement of costs actually incurred;
- c) Detailed information with evidence on those costs according actually incurred for the implementation of the KIC added value Activities as described in Annex I, that permit justification of the eligibility of the costs.

- 2.4 EIT Partner will transfer the amount of the Subgrant to the Subgrantee on the basis of a written payment request by the Subgrantee to be sent up to XXX times a year (*specify further if needed*) and a decision of EIT Partner for awarding the amount to the Subgrantee, provided the terms and conditions of this Agreement are complied with. The payment shall be made within thirty days of receipt of the the accepted written payment request however always provided that the conditions listed in Section 2.3 are met by the Subgrantee. The balance payment should be made not later than January 31<sup>st</sup> in the year following the Relevant Year

- 2.5 The Subgrantee shall adhere in the execution of this Agreement to all applicable laws, rules and regulations, including, but not limited to

safety, security, welfare, social security and fiscal laws, rules and regulations. Especially, Subgrantee shall not be entitled to act or to make legally binding declarations on behalf of the EIT Partner, EIT Digital or EIT and shall indemnify all of the latter from any third party claim resulting from a breach of these obligations.

2.6 The liability of EIT Partner under this Agreement shall in any case be limited to the amount of the financial support provided to Subgrantee hereunder and EIT Partner shall not in any case be liable for any indirect or consequential damages. This limitation of liability shall not apply in cases of wilful intent.

2.7 The Subgrantee shall fully and exclusively bear the risks in connection with the KIC Added Value Activities for which financial support is granted by *EIT Partner*. The Subgrantee shall indemnify EIT Digital IVZW and EIT Partner for all damages, penalties, costs and expenses which EIT Digital IVZW or EIT Partner as a result thereof would incur or have to pay to EIT or any third parties with respect to such KIC Added Value Activity financially supported and/or for any damage in general which EIT Digital IVZW or EIT Partner incurs as a result thereof. In addition, should the EIT, in accordance with the FPA or the SGA, have a right to recovery regarding the subgrant under this Agreement, the Subgrantee shall pay the sums in question in the terms and the date specified by the EIT Partner, in execution of any request formulated by EIT, EIT Digital IVZW or the EIT Partner. Moreover the Subgrantee shall indemnify and hold EIT Digital and the EIT Partner, their respective officers, directors, employees and agents harmless from and against all repayments, loss, liability, costs, charges, claims or damages that result from or arising out of any such recovery action.

### **3. CONDITIONS FROM THE FPA and SGA**

The EIT Partner receives funding from the EIT and some of the obligations of the EIT Partner under the FPA and the SGA have to be imposed on the Subgrantee by the EIT Partner. The Subgrantee acknowledges and agrees that these obligations will be fully applicable to it and shall do everything that is necessary in order to enable the EIT Partner to comply with these obligations.

The Subgrantee acknowledges and agrees that the EIT, Commission, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 28 and 29 of the FPA also towards the Subgrantee.

The Subgrantee acknowledges and agrees that EIT Partner's obligations under Articles 41, 42, 44 and 52 of the FPA also apply to the subgrantee.

Annex II includes the Articles 28, 29, 41, 42, 44 and 52 of the FPA and Article 13 of the SGA.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

The Subgrantee acknowledges the provisions of article 32.3 of the FPA as follows:

“If third parties (including personnel) may claim rights to the results, the EIT Partner concerned must ensure that it complies with its obligations under the Framework Partnership Agreement and the Specific Agreement.

If a third party generates results, the EIT Partner concerned must obtain all necessary rights (transfer, licences or other) from the third party, in order to be able to respect its obligations as if those results were generated by the EIT Partner itself.”

Therefore, the Parties agree as follows:

#### **5. CONFIDENTIALITY**

The Parties shall keep in confidence for the duration and for a period of three years after the termination of this Agreement any Partner's technical or business information which was declared as confidential, and shall not disclose such information to third parties without the prior written consent of the respective Partner. This obligation shall not apply to any information which is:

- proven to have been known to the receiving Party prior to the time of its receipt pursuant to this Agreement; or
- in the public domain at the time of disclosure to the receiving Party or thereafter enters the public domain without breach of the terms of this Agreement; or
- lawfully acquired by the receiving Party from an independent source having a bona fide right to disclose the same; or
- independently developed by an employee of the receiving Party who has not had access to any of the Confidential Information of the other Party.

As far as EIT Partner is concerned, EIT and EIT Digital shall not be regarded as a third party.

## **6. TERMINATION**

Each Party can terminate this Agreement with immediate effect through written notice to the other Party:

- 6.1 if the other Party is in breach of any of its material obligations under this Agreement, which breach is not remediable, or, if remediable, has not been remedied within thirty (30) days after written notice to that effect from the party not in breach;
- 6.2 if the other Party is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with its creditors, has suspended business activities, or is the subject of any other similar proceeding concerning those matters; or
- 6.3 if the other Party is subject to an Event of Force Majeure, which prevents the other Party from correct performance of its obligations hereunder and such circumstances have lasted, or can reasonably be expected to last more than 3 months.

## **7. CONCLUDING CONDITIONS**

1. Ancillary agreements, amendments, additions hereto shall be made in writing. This applies also if the requirement of the written form shall be waived.
2. Any subcontract by the Subgrantee concerning some of its tasks under this Agreement requires the prior written consent of the EIT Partner and does not affect its own obligations resulting from this Agreement. The Subgrantee shall secure that the subcontractor will comply with all obligations – especially coming from the FPA and the SGA, and with regard to confidentiality – resulting from this Agreement and that the results attained by the subcontractor will be available in accordance with Section 4.
3. If any provision of this Agreement is determined to be illegal or in conflict with the applicable law, the validity of the remaining provisions shall not be affected. The ineffective provision shall be replaced by an effective provision which is economically equivalent. The same shall apply in case of a gap.
4. This Agreement will come into force on the date of the last signature.
5. This Agreement shall be governed by and construed in accordance with the laws of Belgium.
6. Any disagreement or dispute which may arise in connection with this Agreement and which the Parties are unable to settle by mutual agreement will be brought before the courts of Brussels.

Done in two original exemplaries, one for each Party.

(EIT Partner)

(Subgrantee)

## Annex 1 Description of the KIC Added Value Activities

Title	Description
1. Title of Activity/Task	Title of the Activity/Task of the KAVA that the Subgrantee performs.
2. Key Performance Indicators (KPIs)	Description to relevant KPIs planned to be achieved following the implementation of the Activity/Task in the year N: both EIT core KPIs, and KIC specific KPIs (see BP Annex II). Please, indicate the value for year N as well as target for N+1 and N+2.
3. Key outputs and deliverables	<p>List and description of expected key measurable outputs in year N and their expected date of delivery. It shall include also the list and description of tangible and verifiable deliverable(s) in year N. Both, outputs and deliverables listed shall relate to the year N only!</p> <p><b>Outputs</b> are what is directly produced or supplied through the KICs activities. In the context of the EIT, outputs may refer to the concrete technology, product, service, method, design, concept, methodology, approach, graduates, etc. created by a KIC added-value activity (KAVA). Examples: new products or processes, transformation of existing products, innovative education and training modules, new curricula and qualifications, e-learning modules, guidance material for new approaches and methodologies, testbeds and experimental facilities, prototypes, patents, publications, etc.</p> <p><b>Deliverables</b> are the tangible document, medium, or other artefact encapsulating the quantifiable outputs (e.g. products, services) created by a KIC added value activity in pursuit of a specific objective and defined in the Business Plan for each specific activity. Deliverables represent the outputs in a format that can be uploaded on duna submission tool at the time of reporting. A deliverable shall be chosen in a way that can represent a proof of the KAVA's proper implementation. A minimum of 1 deliverable shall be planned per KAVA. Examples: comparative studies, market analysis reports; handbook and training tools; innovative education and training modules; described new curricula and qualifications; product technical documentation; results of client's satisfactory survey or testing; e-learning modules manuals and statistics of attendance; documentation about seminars, workshops, conferences, online forums, newsletters etc.</p>



	<p>For large KAVAs (i.e. for KAVAs exceeding 1.5 MEUR) the value of each deliverable shall be quantified and expressed in financial terms.</p>						
<p>4. KAVA Task description / Work plan</p>	<p><b>A clear but short KAVA Task summary</b> indicating the aim of the activity/project: e.g. what it is about and what the final outcome is; what is the added value over existing technology/solutions and the value of the project compared to them; what is the KAVA composition (in case of higher degree of aggregation and one KAVA includes several projects).</p> <p><b>The expected project duration</b> in terms of expected starting and closing dates (MM-YY) regardless the BP scope.</p> <p><b>Description of the work</b> that is planned within the KAVA for year N, divided into the work packages-tasks, including key milestones/outputs/deliverables and time indication. Where the activity spans over several years, the specific scope of activities to be implemented for the year N shall be clear by explaining (1) what is the long-term work planned, (2) which specific activities are planned for year N and (3) which is/are the critical milestone(s) to be achieved in year N. Focus shall be given on the year N while the span over the year N may be outline for better understanding only.</p> <p>If a KAVA includes several projects, the budget and deliverables for each project should be clearly specified.</p> <p>It is recommended to identify risks and mitigations, or use SWOT analysis for large KAVAs.</p>						
<p>6. Key assumptions on the estimated costs of the KAVA</p>	<p>Description and justification of the underpinning resources needed for the implementation of the KAVA activity for Year N. The explanation on estimated costs of the resources shall include the assumptions applied in budgeting costs in the different cost categories (see table below).</p> <p>The <u>use of in-kind contributions against payment or free of charge</u>, as well as the use of <u>simplified cost methodologies</u> (i.e. unit costs / lump sums) shall be clearly specified in the relevant cost categories.</p> <table border="1" data-bbox="475 1671 1402 1944"> <thead> <tr> <th data-bbox="475 1671 727 1767">Cost Category</th> <th data-bbox="727 1671 844 1767">KAVA costs</th> <th data-bbox="844 1671 1402 1767">Explanation</th> </tr> </thead> <tbody> <tr> <td data-bbox="475 1767 727 1944">A Personnel</td> <td data-bbox="727 1767 844 1944"></td> <td data-bbox="844 1767 1402 1944">For direct <u>personal cost</u>, the estimated FTE per each profile shall be indicated forming basis of the personnel cost calculation.</td> </tr> </tbody> </table>	Cost Category	KAVA costs	Explanation	A Personnel		For direct <u>personal cost</u> , the estimated FTE per each profile shall be indicated forming basis of the personnel cost calculation.
Cost Category	KAVA costs	Explanation					
A Personnel		For direct <u>personal cost</u> , the estimated FTE per each profile shall be indicated forming basis of the personnel cost calculation.					

	B Sub-contracting		<u>Subcontracting</u> setting out the estimated cost for each subcontract <sup>1</sup> .
	Other direct costs: D1 Travel and subsistence D2 Equipment, infrastructure or other assets D3 Cost of other goods and service		Under the <u>other direct costs</u> , the costs shall be split per sub-category (D1-D4). Correspondingly, the following information should be provided: <ul style="list-style-type: none"> <li>• list of planned relevant meetings, workshops and other relevant events;</li> <li>• list of equipment items;</li> <li>• brief description of consumables and other goods and services.</li> </ul>
	E Indirect costs		According to applicable H2020 rules, <u>indirect costs</u> shall be calculated on flat-rate basis: a 25 % flat-rate applies to the eligible direct costs, minus certain direct eligible costs e.g. subcontracting costs, costs of in-kind contributions incurred by third parties outside of the KIC partner's premises, costs of providing financial support to third parties.

---

<sup>1</sup> The EIT may however approve subcontracts not set out in Annex I without amendment; if: - they are specifically justified in the KIC Report and - they do not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment

## **Annex II Conditions from the FPA and the SGA**

### **Conditions from the FPA**

#### **ARTICLE 28 — CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS — EXTENSION OF FINDINGS**

##### 28.1 Checks, reviews and audits by the EIT and the Commission

###### 28.1.1 Right to carry out checks

The EIT will — during the implementation of a specific action or afterwards — check the proper implementation of the specific action and compliance with the obligations under the Framework Partnership Agreement and the Specific Agreement, including assessing deliverables and reports.

For this purpose the EIT may be assisted by external persons or bodies.

The EIT may also request additional information in accordance with Article 23. The EIT may request EIT Partners to provide such information to it directly.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

###### 28.1.2 Right to carry out reviews

The EIT may — during the implementation of a specific action or afterwards — carry out reviews on the proper implementation of the specific action (including assessment of deliverables and reports), compliance with the obligations under the Framework Partnership Agreement and the Specific Agreement.

Reviews may be started up to two years after the payment of the balance. They will be formally notified to the KIC LE or EIT Partner concerned and will be considered to have started on the date of the formal notification.

If the review is carried out on a third party (see Articles 15 to 22), the EIT Partner concerned must inform the third party.

The EIT may carry out reviews directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the KIC LE or the EIT Partner concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The KIC LE or EIT Partner concerned must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted (including information on the use of resources).

The KIC LE or EIT Partner concerned may be requested to participate in meetings, including with external experts.

For on-the-spot reviews, the EIT Partners must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the review findings, a 'review report' will be drawn up.

The EIT will formally notify the review report to the KIC LE or EIT Partner concerned, which has 30 days to formally notify observations ('contradictory review procedure').

Reviews (including review reports) are in English.

### 28.1.3 Right to carry out audits

The EIT or the Commission may — during the implementation of a specific action or afterwards — carry out audits on the proper implementation of the specific action and compliance with the obligations under the Framework Partnership Agreement and the Specific Agreement.

Audits may be started up to two years after the payment of the balance. They will be formally notified to the KIC LE or EIT Partner concerned and will be considered to have started on the date of the formal notification.

If the audit is carried out on a third party (see Articles 15 to 22), the EIT Partner concerned must inform the third party.

The EIT or the Commission may carry out audits directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the KIC LE or the EIT Partner concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The KIC LE or the EIT Partner concerned must provide — within the deadline requested — any information (including complete accounts, individual salary statements or other personal data) to verify compliance with the Framework Partnership Agreement and Specific Agreements. The EIT or the Commission may request EIT Partners to provide such information to it directly.

For on-the-spot audits, the EIT Partners must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the audit findings, a 'draft audit report' will be drawn up.

The EIT or the Commission will formally notify the draft audit report to the KIC LE or the EIT Partner concerned, which has 30 days to formally notify observations ('contradictory audit procedure'). This period may be extended by the EIT or the Commission in justified cases.

The 'final audit report' will take into account observations by the KIC LE or EIT Partner concerned. The report will be formally notified to it.

Audits (including audit reports) are in English.

The EIT or the Commission may also access the EIT Partners' statutory records for the periodical assessment of unit costs, flat-rate amounts or lump sums.

## 28.2 Investigations by the European Anti-Fraud Office (OLAF)

Under Regulations No 883/2013<sup>1</sup> and No 2185/96<sup>2</sup> (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may — at any moment during implementation of a specific action or afterwards — carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the Framework Partnership Agreement or Specific Agreement affecting the financial interests of the EU.

## 28.3 Checks and audits by the European Court of Auditors (ECA)

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 111 of the EIT Financial Regulation<sup>3</sup>, the European Court of Auditors (ECA) may — at any moment during implementation of a specific action or afterwards — carry out audits.

The ECA has the right of access for the purpose of checks and audits.

## 28.4 Checks, reviews, audits and investigations for international organisations

Not applicable

## 28.5 Consequences of findings in checks, reviews, audits and investigations — Extension of findings

### 28.5.1 Findings in a specific grant

Findings in checks, reviews, audits or investigations carried out in the context of a specific grant may lead to the rejection of ineligible costs (see Article 48), reduction of the specific grant (see Article 49), recovery of undue amounts (see Article 50) or to any of the other measures described in Section 5.

Rejection of costs or reduction of the specific grant after the payment of the balance will lead to a revised final grant amount (see Article 4 SGA).

Findings in checks, reviews, audits or investigations may lead to a request for amendment for the modification of Annex 1 to the Specific Agreement (see Article 61).

Checks, reviews, audits or investigations that find systemic or recurrent errors, irregularities, fraud or breach of obligations may also lead to consequences in other EIT, EU or Euratom grants awarded under similar conditions ('extension of findings from the specific grant to other grants').

Moreover, findings arising from an OLAF investigation may lead to criminal prosecution under national law.

### 28.5.2 Findings in other grants

The EIT or the Commission may extend findings from other grants to a specific grant ('extension of findings from other grants to a specific grant'), if:

(a) the EIT Partner concerned is found, in other EIT, EU or Euratom grants awarded under similar conditions, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on the specific grant and

(b) those findings are formally notified to the EIT Partner concerned — together with the list of grants affected by the findings — no later than two years after the payment of the balance of the specific grant.

The extension of findings may lead to the rejection of costs (see Article 48) reduction of the specific grant (see Article 49), recovery of undue amounts (see Article 50), suspension of the action implementation (see Article 55) or termination of the specific grant (see Article 56).

### 28.5.3 Procedure

The EIT or the Commission will formally notify the EIT Partner concerned the systemic or recurrent errors, and its intention to extend these audit findings together with the list of grants affected.

28.5.3.1 If the findings concern eligibility of costs: the formal notification will include:

(a) an invitation to submit observations on the list of grants affected by the findings;

(b) the request to submit revised financial statements for all grants affected;

(c) the correction rate for extrapolation established by the EIT or the Commission on the basis of the systemic or recurrent errors, to calculate the amounts to be rejected if the EIT Partner concerned:

(i) considers that the submission of revised financial statements is not possible or practicable or

(ii) does not submit revised financial statements.

The EIT Partner concerned has 90 days from receiving notification to submit observations, revised financial statements or to propose a duly substantiated alternative correction method. This period may be extended by the EIT or the Commission in justified cases.

The amounts to be rejected will be determined on the basis of the revised financial statements, subject to their approval.

If the EIT or the Commission does not receive any observations or revised financial statements, does not accept the observations or the proposed alternative correction method or does not approve the revised financial statements, it will formally notify to the EIT Partner concerned the application of the initially notified correction rate for extrapolation.

If the EIT or the Commission accepts the alternative correction method proposed by the EIT Partner concerned, it will formally notify to the EIT Partner concerned the application of the accepted alternative correction method.

28.5.3.2 If the findings concern improper implementation or breach of other obligations, the formal notification will include:

(a) an invitation to submit observations on the list of grants affected by the findings and

(b) the flat-rate the EIT or the Commission intends to apply according to the principle of proportionality.

The EIT Partner concerned has 90 days from receiving notification to submit observations or to propose a duly substantiated alternative flat-rate.

If the EIT or the Commission does not receive any observations or does not accept the observations or the proposed alternative flat-rate, it will formally notify to the EIT Partner concerned the application of the initially notified flat-rate.

If the EIT or the Commission accepts the alternative flat-rate proposed by the EIT Partner, it will formally notify the EIT Partner concerned the application of the accepted alternative flat-rate.

## 28.6 Consequences of non-compliance

If a EIT Partner breaches any of its obligations under this Article, any insufficiently substantiated costs of specific actions will be ineligible (see Article 5 SGA) and will be rejected (see Article 48).

Such breaches may also lead to any of the other measures described in Section 5.

## **ARTICLE 29 — MONITORING AND EXTERNAL EVALUATION OF THE KIC**

### 29.1 Right to monitor and evaluate the KIC

The EIT or the Commission may carry out interim and final evaluations of the output, results and impact of the KIC.

Evaluations may be started during implementation of a specific action and up to a period of five years after the payment of the balance. The evaluation is considered to start on the date of the formal notification to the KIC LE or EIT Partners.

The EIT or the Commission may make these evaluations directly (using its own staff) or indirectly (using external bodies or persons it has authorised to do so).

The KIC LE and EIT Partners must provide any information requested to evaluate its impact, including information in electronic format.

### 29.2 Consequences of non-compliance

If a EIT Partner breaches any of its obligations under this Article, the EIT may apply the measures described in Section 5.

## **ARTICLE 29a — MANAGEMENT OF INTELLECTUAL PROPERTY**

#### 29a.1 Obligation to take measures to implement the Commission Recommendation on the management of intellectual property in knowledge transfer activities

EIT Partners that are universities or other public research organisations must take measures to implement the principles set out in Points 1 and 2 of the Code of Practice annexed to the Commission Recommendation on the management of intellectual property in knowledge transfer activities.

This does not change the obligations set out in Subsubsections 2 and 3 of this Subsection.

The EIT Partners must ensure that researchers and third parties involved in the specific actions are aware of them.

#### 29a.2 Consequences of non-compliance



If a EIT Partner breaches its obligations under this Article, the EIT may apply any of the measures described in Section 5.

## **ARTICLE 41 – CONFLICT OF INTERESTS**

### **41.1 Obligation to avoid a conflict of interests**

The EIT Partners must take all measures to prevent any situation where the impartial and objective implementation of the specific actions is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests').

They must formally notify to the EIT without delay any situation constituting or likely to lead to a conflict of interests and immediately take all the necessary steps to rectify this situation.

The EIT may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

### **41.2 Consequences of non-compliance**

If a EIT Partner breaches any of its obligations under this Article, the grant may be reduced (see Article 49) and the Specific Agreement or participation of the EIT Partner may be terminated (see Article 56).

Such breaches may also lead to any of the other measures described in Section 5.

## **ARTICLE 42 – CONFIDENTIALITY**

### **42.1 General obligation to maintain confidentiality**

During implementation of the specific action and for four years after the period set out in Article 3 of the Specific Agreement, the parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed ('confidential information').

If a EIT Partner requests, the EIT may agree to keep such information confidential for an additional period beyond the initial four years.

If information has been identified as confidential only orally, it will be considered to be confidential only if this is confirmed in writing within 15 days of the oral disclosure.

Unless otherwise agreed between the parties, they may use confidential information only to implement the Framework Partnership Agreement or Specific Agreement.

The EIT Partners may disclose confidential information to their personnel or third parties involved in the specific action only if they:

(a) need to know to implement the Framework Partnership Agreement or Specific Agreements and

(b) are bound by an obligation of confidentiality.

This does not change the security obligations in Article 43, which still apply.

The EIT may disclose confidential information to its staff, other EU institutions and bodies or third parties, if:

(a) this is necessary to implement the Framework Partnership Agreement or Specific Agreement or safeguard the EIT's financial interests and

(b) the recipients of the information are bound by an obligation of confidentiality.

The confidentiality obligations no longer apply if:

(a) the disclosing party agrees to release the other party;

(b) the information was already known by the recipient or is given to him without obligation of confidentiality by a third party that was not bound by any obligation of confidentiality;

(c) the recipient proves that the information was developed without the use of confidential information;

(d) the information becomes generally and publicly available, without breaching any confidentiality obligation; or

(e) the disclosure of the information is required by EU or national law.

#### 42.2 Consequences of non-compliance

If a EIT Partner breaches any of its obligations under this Article, the specific grant may be reduced (see Article 49).

Such breaches may also lead to any of the other measures described in Section 5.

## **ARTICLE 44 — PROMOTING THE KIC — VISIBILITY OF THE EIT AND EU FUNDING**

### 44.1 Communication activities by the EIT Partners

#### 44.1.1 Obligation to promote the specific action and its results

The EIT Partners must promote the specific action and its results by providing targeted information to multiple audiences (including the media and the public) in a strategic and effective manner.

This does not change the specific dissemination obligations in Article 35, the confidentiality obligations in Article 42 or the security obligations in Article 43, all of which still apply.

Before engaging in a communication activity expected to have a major media impact, the EIT Partners must inform the EIT (see Article 58).

#### 44.1.2 Information on EIT and EU funding — Obligation and right to use the EIT KIC logo and the EU emblem

Unless the EIT requests or agrees otherwise or unless it is impossible, any communication activity related to the specific action (including in electronic form, via social media, etc.) as well as any infrastructure, equipment and major results funded by the specific grants must:

- (a) display the EIT KIC logo as adopted by the EIT;
- (b) display the EU emblem;
- (c) follow the brand guidelines outlined in the EIT Community Brand Book as adopted by the EIT; and
- (d) include the following text:

For communication activities: 'This activity has received funding from the European Institute of Innovation and Technology (EIT). This body of the European Union receives support from the European Union's Horizon 2020 research and innovation programme.'

For infrastructure, equipment and major results: 'This [*infrastructure*] [*equipment*] [*insert type of result*] is part of an activity that has received funding from the European Institute of Innovation and Technology (EIT). This body of the European Union receives support from the European Union's Horizon 2020 research and innovation programme.'

When displayed together with another logo, the EIT KIC logo and the EU emblem must have appropriate prominence.

For the purposes of their obligations under this Article, the EIT Partners may use the EIT KIC logo and the EU emblem without prior approval from the EIT.

This does not, however, give them the right to exclusive use.

Moreover, they may not appropriate the EIT KIC logo or the EU emblem (or any similar trademark or logo), either by registration or by any other means.

#### 44.1.3 Disclaimer excluding EIT responsibility

Any communication activity related to the specific action must indicate that it reflects only the author's view and that the EIT is not responsible for any use that may be made of the information it contains.

### 44.2 Communication activities by the EIT

#### 44.2.1 Right to use KIC's materials, documents or information

The EIT may use, for its communication and dissemination activities, information relating to the specific action, documents notably summaries for publication and public deliverables as well as any other material, such as pictures or audio-visual material that it receives from any EIT Partner (including in electronic form).

This does not change the confidentiality obligations in Article 42 and the security obligations in Article 43, all of which still apply.

However, if the EIT's use of these materials, documents or information would risk compromising legitimate interests, the EIT Partner concerned may request the EIT not to use it (see Article 58).

The right to use a EIT Partner's materials, documents and information includes:

(a) use for its own purposes (in particular, making them available to persons working for the EIT or any other EU institution, agency or body, or institutions in EU Member States; and copying or reproducing them in whole or in part, in unlimited numbers);

(b) distribution to the public (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);

(c) editing or redrafting for communication and publicising activities (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation);

(d) translation;

(e) giving access in response to individual requests under Regulation No 1049/2001, without the right to reproduce or exploit;

(f) storage in paper, electronic or other form;

(g) archiving, in line with applicable document-management rules; and

(h) the right to authorise third parties to act on its behalf or sub-license the modes of use set out in Points (b), (c), (d) and (f) to third parties, if needed for the communication and publicising activities of the EIT.

If the right of use is subject to rights of a third party (including personnel of the EIT Partner), the EIT Partner must ensure that it complies with its obligations under the Framework Partnership Agreement and the Specific Agreement (in particular, by obtaining the necessary approval from the third parties concerned).

Where applicable (and if provided by the EIT Partners), the EIT will insert the following information:

"© - [year] - [name of the copyright owner]. All rights reserved. Licensed to the European Institute of Innovation and Technology (EIT) under conditions."

#### 44.3 Consequences of non-compliance

If a EIT Partner breaches any of its obligations under this Article, the specific grant may be reduced (see Article 49).

Such breaches may also lead to any of the other measures described in Section 5.

## **ARTICLE 52 — LIABILITY FOR DAMAGES**

## 52.1 Liability of the EIT

The EIT cannot be held liable for any damage caused to the EIT Partners or to third parties as a consequence of implementing the Framework Partnership Agreement or a Specific Agreement, including for gross negligence.

The EIT cannot be held liable for any damage caused by any of the EIT Partners or third parties involved in the specific action, as a consequence of implementing the Framework Partnership Agreement or a Specific Agreement.

## 52.2 Liability of the EIT Partners

### 52.2.1 Conditions

Except in case of force majeure (see Article 57), the EIT Partners must compensate the EIT for any damage the EIT sustains as a result of the implementation of a specific action or because a specific action was not implemented in full compliance with the Framework Partnership Agreement or a Specific Agreement.

Each EIT Partner is responsible for paying the damages claimed from it.

### 52.2.2 Amount of damages - Calculation

The amount the EIT can claim from a EIT Partner will correspond to the damage caused by that EIT Partner.

### 52.2.3 Procedure

Before claiming damages, the EIT will formally notify the EIT Partner concerned:

- informing it of its intention to claim damages, the amount and the reasons why and
- inviting it to submit observations within 30 days.

If the EIT does not receive any observations or decides to claim damages despite the observations it has received, it will formally notify confirmation of the claim for damages and a debit note, specifying the amount to be recovered, the terms and the date for payment.

If payment is not made by the date specified in the debit note, the EIT may recover the amount:

(a) by offsetting it — without the EIT Partner's consent — against any amounts owed to the EIT Partner concerned by the EIT.

In exceptional circumstances, to safeguard its financial interests, the EIT may offset before the payment date in the debit note;

(b) by taking legal action (see Article 63).

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by late-payment interest at the rate set out in Article 17 SGA, from the day following the payment date in the debit note, up to and including the date the EIT receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the EIT Partner, unless Directive 2007/64/EC applies.

## **Conditions from the SGA**

### ARTICLE 13 — FINANCIAL SUPPORT TO THIRD PARTIES

#### **13.1 Rules for providing financial support to third parties**

13.1.1 The EIT Partners must provide financial support in accordance with the conditions set out in Annex 1.

At a minimum, these conditions must include:

- (a) the maximum amount of financial support for each third party.

The maximum amount may not exceed EUR 60 000 for each third party, unless it is necessary to achieve the objectives of the specific action as described in Annex 1;

- (b) the criteria for calculating the exact amount of the financial support;
- (c) the different types of activity that qualify for financial support, on the basis of a closed list;
- (d) the persons or categories of persons that may receive financial support;  
and
- (e) the criteria for giving financial support.

The EIT Partners must ensure that the EIT, Commission, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights

under Articles 28 and 29 FPA also towards the third parties receiving financial support.

13.1.2 The EIT Partners must ensure that their obligations under Articles 41, 42, 44 and 52 FPA also apply to the third parties receiving financial support.

### **13.2 Financial support in the form of prizes**

13.2.1 The EIT Partners must provide prizes in accordance with the conditions described in Annex 1.

At a minimum, these conditions must include:

- (a) the conditions for participation;
- (b) the award criteria;
- (c) the amount of the prize; and
- (d) the payment arrangements.

The EIT Partners must ensure that the EIT, Commission, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 28 and 29 FPA also towards the third parties receiving a prize.

13.2.2 The EIT Partners must ensure that their obligations under Articles 41, 42, 44 and 52 FPA also apply to the third parties receiving a prize.

### **13.3 Consequences of non-compliance**

If a EIT Partner breaches any of its obligations under Articles 13.1.1 or 13.2.1, the costs related to the financial support or prize will be ineligible (see Article 5) and will be rejected (see Article 48 FPA).

If a EIT Partner breaches any of its obligations under Articles 13.1.2 or 13.2.2, the specific grant may be reduced (see Article 49 FPA).

Such breaches may also lead to any of the other measures described in Section 5 of Chapter 3 of the Framework Partnership Agreement.