

## SPECIFIC GRANT AGREEMENT

Contract No. EIT/RAW MATERIALS/SGA2017/1

This 'Specific Grant Agreement' is between the following parties:

on the one part,

The European Institute of Innovation and Technology ('the EIT'), represented for the purposes of signature of this Specific Agreement by its Interim Director, Martin Kern,

and

on the other part,

1. The Knowledge and Innovation Community Legal Entity ('the KIC LE'):

EIT Raw Materials GmbH (EIT Raw Materials), established in, Anna Louisa Karsch Street 2, Spreepalais, 10178 Berlin, Germany, VAT number DE301226428, represented for the purposes of signing the Specific Agreement by CEO Karen Hangh0L hereinafter referred to as the "KIC LE",

2. and the other Knowledge and Innovation Community ('KIC') Partners listed in Annex 2 of the Framework Partnership Agreement (FPA) represented for the purposes of signing the Specific Grant Agreement by the KIC LE (see the mandate in Annex 4 FPA and Article 62 FPA).

Unless otherwise specified, references to 'KIC Partner' or 'KIC Partners' include the KIC LE.

By entering into the Specific Grant Agreement, the KIC Partners accept the grant and agree to implement the specific action under their own responsibility and in accordance with the Framework Partnership Agreement and this Specific Grant Agreement, with all the obligations and conditions they set out.

The Specific Grant Agreement is composed of:

Terms and Conditions

Annex 1: Description of the specific action

Annex 2: Estimated budget 2017;

Annex 3: Model for the financial statements

Annex 4: Model for the certificate on the financial statements

Annex 5: Unit costs for SME owners/natural beneficiaries without salary

## TERMS AND CONDITIONS

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## CHAPTER 1 GENERAL

### ARTICLE 1 – SUBJECT OF THE AGREEMENT

This Agreement sets out the specific terms and conditions and rights and obligations applicable to the specific grant awarded to the KIC Partners for implementing a specific action under the Framework Partnership Agreement No FPA2016/EIT/EIT RAW MATERIALS ('Framework Partnership Agreement (FPA)')

## CHAPTER 2 ACTION

### ARTICLE 2 -ACTION TO BE IMPLEMENTED

The specific action to be implemented is described in Annex 1.

### ARTICLE 3 – DURATION AND STARTING DATE OF THE ACTION

The duration of the specific action will be from 1 January 2017 ('starting date of the specific action') until 31 December 2017.

## CHAPTER 3 SPECIFIC GRANT

### ARTICLE 4 -GRANT AMOUNT, FORM OF GRANT, REIMBURSEMENT RATES AND FORMS OF COSTS

#### 4.1 Financing of the KIC Business Plan

The total cost of the implementation of the KIC Business Plan is estimated at EUR 154,843,850.16 (one hundred fifty-four million, eight hundred forty-three thousand, eight hundred fifty euros and sixteen eurocents) as set out in Annex 2.

#### 4.2 Maximum grant amount

The 'maximum grant amount' for the specific grant is EUR 34,775,244.00 (thirty-four million, seven hundred seventy-five thousand, two hundred forty-four euros and zero eurocent).

#### 4.3 Form of grant, reimbursement rates and forms of costs

The grant reimburses 77.67% of the specific action's eligible costs (see Article 5) ('reimbursement of eligible costs') (see Annex 2).

The estimated eligible costs of the specific action are EUR 44,773,343.00 (forty-four million, seven hundred seventy-three thousand, three hundred forty-three euros and zero eurocent).

Eligible costs (see Article 5) must be declared under the following forms ('forms of costs'):

- a.) for direct personnel *costs* (excluding personnel costs covered by the unit cost/lump sum under Point (f)):

as actually incurred costs ('actual costs') or

on the basis of an amount per unit calculated by the KIC Partner in accordance with its usual cost accounting practices ('unit costs').

Personnel costs for SME owners or for KIC Partners that are natural persons not receiving a salary (see Points A4 and AS of Article 5.2) must be declared on the basis of the amount per unit set out in Annex 5 (unit costs);

- b.) for direct costs of subcontracting (excluding subcontracting costs covered by the unit cost/lump sum under Point (f)): as actually incurred costs (actual costs);
- c.) for direct costs of providing financial support to third parties (excluding costs of financial support covered by the unit cost/lump sum under Point (f)): as actually incurred costs (actual costs);
- d.) for other direct costs (excluding other direct costs covered by the unit cost/lump sum under Point (f)): as actually incurred costs (actual costs);
- e.) for indirect costs (excluding indirect costs for the unit cost/lump sum under Point (f)): on the basis of a flat-rate applied as set out in Article 5.2, Point E ('flat-rate costs');
- f) for the unit costs of
- EIT labelled masters programmes (excluding the management costs),
  - EIT labelled doctoral programmes
- on the basis of the amount(s) per unit set out in the Commission Decision No C(2016) 8298 (unit costs), and

for the lump sum costs of the management of the EIT labelled degrees: as the lump sum set out in Annex 1 (lump sum cost).

## ARTICLE 5 – ELIGIBLE AND INELIGIBLE COSTS

### 5.1 General conditions for costs to be eligible

'Eligible costs' are costs of KIC added value activities, which meet the following criteria:

- a.) for actual costs:

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1 Commission Decision no C(2013) 8197 on the use of reimbursement on the basis of unit costs for the personnel costs of the owners of small and medium-sized enterprises and beneficiaries that are natural persons not receiving a salary



- (i) they must be actually incurred by the KIC Partner;
  - (ii) they must be incurred in the period set out in Article 3, with the exception of costs relating to the submission of the final report (see Article 16);
  - (iii) they must be indicated in the estimated budget set out in Annex 2;
  - (iv) they must be incurred in connection with the specific action as described in Annex 1 and necessary for its implementation;
  - (v) they must be identifiable and verifiable, in particular recorded in the KIC Partner's accounts in accordance with the accounting standards applicable in the country where the KIC Partner is established and with the KIC Partner's usual cost accounting practices;
  - (vi) they must comply with the applicable national law on taxes, labour and social security, and
  - (vii) they must be reasonable, justified and must comply with the principle of sound financial management, in particular regarding economy and efficiency;
- b.) for **unit** costs:
- (i) they must be calculated as follows:  
  
{amounts per unit set out in the Commission Decision No C(2016) 8298 or calculated by the KIC Partner in accordance with its usual cost accounting practices (see Article 5.2, Point A)}  
  
multiplied by  
  
the number of actual units};
  - (ii) the number of actual units must comply with the following conditions:  
  
the units must be actually used or produced in the period set out in Article 3;  
  
the units must be necessary for implementing the specific action or produced by it, and  
  
the number of units must be identifiable and verifiable, in particular supported by records and documentation (see Article 24 FPA).
- c.) for **flat-rate** costs:
- (i) they must be calculated by applying the flat-rate set out in Annex 1, and

- (ii) the costs (actual costs or unit costs or lump-sum costs) to which the flat-rate is applied must comply with the conditions for eligibility set out in this Article;

d.) for lump sum costs:

- (i) the eligible amount is equal to the amount set out in Annex 1, and
- (ii) the corresponding tasks or parts of the specific action must have been properly implemented in accordance with Annex 1.

## 5.2 Specific conditions for costs to be eligible

Costs are eligible if they comply with the general conditions (see above) and the specific conditions set out below for each of the following budget categories:

- A. direct personnel costs;
- B. direct costs of subcontracting;
- C. direct costs of providing financial support to third parties;
- D. other direct costs;
- E. indirect costs;
- F. unit costs of EIT labelled masters programmes (excluding the management costs), unit costs of EIT labelled doctoral programmes; and the lump sum costs of the management of the EIT labelled degrees.

'Direct costs' are costs that are directly linked to the implementation of the specific action and can therefore be attributed to it directly. They must not include any indirect costs (see Point E below).

'Indirect costs' are costs that are not directly linked to the implementation of the specific action and therefore cannot be attributed directly to it.

A. Direct personnel costs (not covered by in Point F)

### Types of eligible personnel costs

A.1 Personnel costs are eligible, if they are related to personnel working for the KIC Partner under an employment contract (or equivalent appointing act) and assigned to the specific action ('costs for employees (or equivalent)'). They must be limited to salaries (including during parental leave), social security contributions, taxes and other costs included in the remuneration, if they arise from national law or the employment contract (or equivalent appointing act).



The KIC Partners that are non-profit legal entities<sup>2</sup> may also declare as personnel costs additional remuneration for personnel assigned to the action (including payments on the basis of supplementary contracts regardless of their nature), if:

- (a) it is part of the KIC Partner's usual remuneration practices and is paid in a consistent manner whenever the same kind of work or expertise is required;
- (b) the criteria used to calculate the supplementary payments are objective and generally applied by the KIC Partner, regardless of the source of funding used.

Additional remuneration for personnel assigned to the action is eligible up to the following amount:

- (a) if the person works full time and exclusively on the action during the full year: up to EUR 8 000;
- (b) if the person works exclusively on the action but not full-time or not for the full year: up to the corresponding pro-rata amount of EUR 8 000, or
- (c) if the person does not work exclusively on the action: up to a pro-rata amount calculated as follows:  
  

$$\{ \{ \text{EUR 8 000 divided by} \\ \text{the number of annual productive hours (see below)} \}, \\ \text{multiplied by} \\ \text{the number of hours that the person has worked on the action during the year} \}.$$

A.2 The costs for natural persons working under a direct contract with the KIC Partner other than an employment contract are eligible personnel costs, if:

- (a) the person works under the KIC Partner's instructions and, unless otherwise agreed with the KIC Partner, on the KIC partner's premises;
- (b) the result of the work carried out belongs to the KIC Partner, and
- (c) the costs are not significantly different from those for personnel performing similar tasks under an employment contract with the KIC Partner.

A.3 The costs of personnel seconded by a third party against payment are eligible personnel costs if the conditions in Article 9.1 are met.

<sup>2</sup> For the definition, see Article 2.1(14) Rules for Participation Regulation (EU) No 1290/2013: 'non-profit legal entity' means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.

A.4 Costs of owners of KIC Partners that are small and medium-sized enterprises ('SME owners') who are working on the action and who do not receive a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 5 multiplied by the number of actual hours worked on the action. In order to allow that the unit costs of SME owners are held eligible, the KIC must properly implement the action and duly document it.

A.5 Costs of 'KIC Partners that are natural persons' not receiving a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 5 multiplied by the number of actual hours worked on the action.

#### Calculation

Personnel costs must be calculated by the KIC Partners as follows:

{{hourly rate  
multiplied by  
the number of actual hours worked on the action},  
plus  
for non-profit legal entities: additional remuneration to personnel assigned to the action under the conditions set out above (Point A.I)}.

The number of actual hours declared for a person must be identifiable and verifiable (see Article 24 FPA).

The total number of hours declared in EIT, EU or Euratom grants, for a person for a year, cannot be higher than the annual productive hours used for the calculations of the hourly rate. Therefore, the maximum number of hours that can be declared for the specific grant are:

{number of annual productive hours for the year (see below)  
minus  
total number of hours declared by the KIC Partner for that person for that year, for other EIT, EU or Euratom grants}.

The 'hourly rate' is one of the following:

- (a) for personnel costs declared as actual costs: the hourly rate is the amount calculated *per full financial year* as follows:

{actual annual personnel costs (excluding additional remuneration) for the period  
divided by



the number of annual productive hours}

using the personnel costs and the number of productive hours for each full financial year covered by the reporting period concerned. If a financial year is not closed at the end of the action, the KIC Partners must use the hourly rate of the last closed financial year available.

For the 'number of annual productive hours', the KIC Partners may choose one of the following:

- (i) 'fixed number of hours': 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time);
- (ii) 'individual annual productive hours': the total number of hours worked by the person in the year for the KIC Partner, calculated as follows:

{annual workable hours of the person (according to the employment contract, applicable collective labour agreement or national law)

Plus

overtime worked minus

absences (such as sick leave and special leave)}.

'Annual workable hours' means the period during which the personnel must be working, at the employer's disposal and carrying out his/her activity or duties under the employment contract, applicable collective labour agreement or national working time legislation.

If the contract (or applicable collective labour agreement or national working time legislation) does not allow to determine the annual workable hours, this option cannot be used.

- (iii) 'standard annual productive hours': the 'standard number of annual hours' generally applied by the KIC Partner for its personnel in accordance with its usual cost accounting practices. This number must be at least 90% of the 'standard annual workable hours'.

If there is no applicable reference for the standard annual workable hours, this option cannot be used.

For all options, the actual time spent on **parental leave** by a person assigned to the action may be deducted from the number of annual productive hours; ..

As an alternative, KIC Partners may calculate the hourly rate per *month*, as I

{actual monthly personnel cost (excluding additional remuneration) for the person  
divided by

{number of annual productive hours / 12}}

using the personnel costs for each month and (one twelfth of) the annual  
productive hours calculated according to either option (i) or (iii) above, i.e.:

-fixed number of hours or

-standard annual productive hours.

Time spent on **parental leave** may not be deducted when calculating the hourly rate  
per month. However, KIC Partners may declare personnel costs incurred in periods  
of parental leave in proportion to the time the person worked on the action in that  
financial year.

If parts of a basic remuneration are generated over a period longer than a month,  
the KIC Partners may include only the share which is generated in the month  
(irrespective of the amount actually paid for that month).

Each KIC Partner must use only one option (per full financial year or per month) for  
each full financial year;

(b) for personnel costs declared on the basis of **unit** costs: the hourly rate is one of the  
following:

- (i) for SME owners or for KIC Partners that are natural persons: the hourly rate set  
out in Annex 5 (see Points A.4 and A.5 above), or
- (ii) for personnel costs declared on the basis of the KIC Partner's usual cost  
accounting practices: the hourly rate calculated by the KIC Partner in accordance  
with its usual cost accounting practices, if:

the cost accounting practices used are applied in a consistent manner, based  
on objective criteria, regardless of the source of funding;

the hourly rate is calculated using the actual personnel costs recorded in the  
KIC Partner's accounts, excluding any ineligible cost or costs included in other  
budget categories.

The actual personnel costs may be adjusted by the KIC Partner on the basis of  
budgeted or estimated elements. Those elements must be relevant for  
calculating the personnel costs, reasonable and correspond to objective and  
verifiable information;

and

the hourly rate is calculated using the number of annual productive hours (see above).

B. Direct costs of subcontracting (not covered by Point F) (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the KIC Partner) are eligible if the conditions in Article 11.1.1 are met.

C. Direct costs of providing financial support to third parties (not covered by Point F)

C.1 Direct costs of providing financial support are eligible if the conditions set out in Article 13.1.1 are met.

C.2 Direct costs of providing financial support in the form of prizes are eligible if the conditions set out in Article 13.2.1 are met.

D. Other direct costs (not covered by Point F)

D.1 Travel costs and related subsistence allowances (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the KIC Partner) are eligible if they are in line with the KIC Partner's usual practices on travel.

D.2 The depreciation costs for equipment, infrastructure or other assets (new or second-hand) as recorded in the KIC Partner's accounts are eligible, if they were purchased in accordance with Article 8.1.1 and written off in accordance with international accounting standards and the KIC Partner's usual accounting practices.

By way of exception, the cost of purchasing equipment, infrastructure or other assets (new or second-hand) as recorded in the partner's accounts, limited for the purpose of supporting the setting up and the development of the KIC LE and Co-location Centres, planned and budgeted uniquely under the area of management and coordination, is eligible up to EUR 750 000, if the equipment, infrastructure or other asset was purchased in accordance with Article 8.1.1. The use of this option needs to be indicated in Annex 1, subject to prior approval by the EIT.

The costs of renting or leasing equipment, infrastructure or other assets (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the KIC Partner) are also eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets and do not include any financing fees.

The costs of equipment, infrastructure or other assets contributed in-kind against payment are eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets, do not include any financing fees and if the conditions in Article 9.1 are met.

The only portion of the costs that will be taken into account is that which corresponds to the duration of the action and rate of actual use for the purposes of the action.



D.3 Costs for other goods and services (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the KIC Partner are eligible if they are:

- (a) purchased specifically for the specific action and in accordance with Article 8.1.1 or
- (b) contributed in kind against payment and in accordance with Article 9.1.

Such goods and services include, for instance, consumables and supplies, dissemination (including open access), protection of results, certificates on the financial statements (if they are required by the Agreement), certificates on the methodology, translations and publications.

D.4 Capitalised and operating costs of 'large research infrastructure'<sup>3</sup> directly used for the specific action are eligible, if:

- (a) the value of the large research infrastructure represents at least 75% of the total fixed assets (at historical value in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure<sup>4</sup>);
- (b) the partner's methodology for declaring the costs for large research infrastructure has been positively assessed by the EIT ('ex-ante assessment');
- (c) the partner declares as direct eligible costs only the portion which corresponds to the duration of the action and the rate of actual use for the purposes of the action, and
- (d) they comply with the conditions as further detailed in the annotations to the H2020 Grant Agreements.

#### E. Indirect costs (not covered by Point F)

Indirect costs are eligible if they are declared on the basis of the flat-rate of 25% of the eligible direct costs (see Article 4.3 and Points A to O above), from which are excluded:

- (a) costs of subcontracting;

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<sup>3</sup>'Large research infrastructure' means research infrastructure of a total value of at least EUR 20 million, for a partner, calculated as the sum of historical asset values of each individual research infrastructure of that partner, as they appear in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure.

For the definition, see Article 2(6) of the H2020 Framework Programme Regulation No 1291/2013: 'Research infrastructure' are facilities, resources and services that are used by the research communities to conduct research and foster innovation in their fields. Where relevant, they may be used beyond research, e.g. for education or public services. They include: major scientific equipment (or sets of instruments); knowledge-based resources such as collections, archives or scientific data; e-infrastructures such as data and communication systems and communication networks; and any other infrastructure of a unique nature essential to achieve excellence in research and innovation. Such infrastructures may be 'single-sited', 'virtual' or 'distributed'.

- (b) costs of in-kind contributions provided by third parties which are not used on the KIC Partner's premises;
- (c) costs of providing financial support to third parties; and
- (d) unit costs under Article 4.2 (f.) and Point F below, lump sum costs under Article 4.2(f) and Point F below.

KIC Partners receiving an operating grant <sup>5</sup> financed by the EU or Euratom budget cannot declare indirect costs for the period covered by the operating grant.

#### F. Unit cost and lump sum costs

The unit costs of EIT labelled masters programmes (excluding the management costs) are eligible, if they correspond to the amount per unit set out in Annex 1 multiplied by the number of actual units and based on the eligibility conditions as set out in the Commission Decision No C(2016) 8298. In order to allow that the unit costs of EIT labelled masters programmes are held eligible, the KIC must properly implement the action and duly document it.

The unit costs of EIT labelled doctoral programmes are eligible, if they correspond to the amount per unit set out in Annex 1 multiplied by the number of actual units and based on the eligibility conditions as set out in the Commission Decision No C(2016) 8298. In order to allow that the unit costs of EIT labelled doctoral programmes are held eligible, the KIC must properly implement the action and duly document it.

The lump sum costs of the management of the EIT labelled degrees are eligible, if they correspond to the lump sum set out in Annex 1 and the corresponding tasks or parts of the action have been properly implemented in accordance with Annex 1 and according to the conditions set out in the Commission Decision No C(2016) 8298. In order to allow that the lump sum costs of the management of the EIT labelled degrees are held eligible, the KIC must properly implement the action and duly document it.

#### 5.3 Conditions for costs of linked third parties to be eligible

Costs incurred by linked third parties are eligible **if they fulfil**- mutatis mutandis — the general and specific conditions for eligibility set out in this Article (Article 5.1 and 5.2) and Article 12.1.1.

#### 5.4 Conditions for in-kind contributions provided by third parties free of charge to be eligible

In-kind contributions provided free of charge are eligible direct costs (for the KIC Partner or linked third party), if the costs incurred by the third party fulfil — mutatis mutandis — the

<sup>5</sup> For the definition, see Article 121(1)(b) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 218, 26.10.2012, p.1) ('Financial Regulation No 966/2012'): 'operating grant' means direct financial contribution, by way of donation, from the budget in order to finance the functioning of a body which pursues an aim of general EU interest objective forming part of and supporting an EU policy



general and specific conditions for eligibility set out in this Article (Article 5.1 and 5.2) and Article 10.1.

#### 5.5 Ineligible costs

'Ineligible costs' are:

- (a) costs of implementing KIC complementary activities;
- (b) costs that do not comply with the conditions set out above (Article 5.1 to 5.4), in particular:
  - (i) costs related to return on capital;
  - (ii) debt and debt service charges;
  - (iii) provisions for future losses or debts;
  - (iv) interest owed;
  - (v) doubtful debts;
  - (vi) currency exchange losses;
  - (vii) bank costs charged by the KIC LE's bank for transfers from the EIT;
  - (viii) excessive or reckless expenditure;
  - (ix) deductible VAT;
  - (x) costs incurred during suspension of the implementation of the specific action (see Article 55 FPA);
- (c) costs declared under another EIT, EU or Euratom grant (including grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the EIT for the purpose of implementing the EU or Euratom budget); in particular, indirect costs if the KIC Partner is already receiving an operating grant financed by the EU or Euratom budget in the same period.

#### 5.6 Consequences of declaration of ineligible costs

Declared costs that are ineligible will be rejected (see Article 48 FPA).

This may also lead to any of the other measures described in Section 5 of Chapter 3 of the Framework Partnership Agreement (FPA).



## CHAPTER 4 RIGHTS AND OBLIGATIONS OF THE PARTIES

### SECTION 1 RIGHTS AND OBLIGATIONS RELATED TO IMPLEMENTING THE SPECIFIC ACTIONS

#### ARTICLE 6 – RESOURCES TO IMPLEMENT THE SPECIFIC ACTION -THIRD PARTIES INVOLVED IN THE SPECIFIC ACTION

The KIC Partners must have the appropriate resources to implement specific action.

If it is necessary to implement the specific action, the KIC Partners may:

- purchase goods, works and services (see Article 8);
- use in-kind contributions provided by third parties against payment (see Article 9);
- use in-kind contributions provided by third parties free of charge (see Article 10);
- call upon subcontractors to implement action tasks described in Annex 1 (see Article 11);
- call upon linked third parties to implement action tasks described in Annex 1 (see Article 12).

In these cases, the KIC Partners retain sole responsibility towards the EIT and the other KIC Partners for implementing the specific action.

#### ARTICLE 7 — IMPLEMENTATION OF ACTION TASKS BY KIC PARTNERS NOT RECEIVING EIT FUNDING

##### 7.1 Rules for the implementation of action tasks by KIC Partners not receiving EIT funding

KIC Partners not receiving EIT funding must implement the specific action tasks attributed to them in Annex 1 according to Article 12 FPA.

Their costs are estimated in Annex 2 but:

- will not be reimbursed and
- will not be taken into account for the calculation of the specific grant (see Articles 4 and Article 17 SGA and Article 10 FPA.)

For KIC Partners not receiving EIT funding which do not have linked third parties receiving EIT funding, Articles 4, 5, 8 to 13, 16.3(b), 16.4(b), 16.6, 17 SGA and Articles 24.1.2, 29a, 32.4, 33.2, 34.1 (with the exception of additional exploitation obligations), 34.2, 36.3, 37.5, 46, 48, 49, 50, 53, 54 FPA do not apply.

They will not be subject to financial checks, reviews and audits under Article 28 of the Framework Partnership Agreement for their own costs.

For KIC Partners not receiving EIT funding which have linked third parties receiving EIT funding, Articles 4, 5, 8 to 13, 16.6 SGA and Articles 29a and 46 FPA do not apply.

Articles 32.4, 33.2, 34.1, 34.2, 36.3, 37.5 FPA do not apply to results generated without EU funds.

They will not be subject to financial checks, reviews and audits under Article 28 FPA for their own costs.

KIC Partners not receiving EU funding may provide in-kind contributions to another KIC Partner. In this case, they will be considered as a third party for the purpose of Articles 9 and 10 SGA.

## 7.2 Consequences of non-compliance

If a KIC Partner not receiving EU funding breaches any of its obligations under this Article, its participation in the Agreement may be terminated (see Article 56 FPA).

Such breaches may also lead to any of the other measures described in Section 5 of Chapter 3 of the Framework Partnership Agreement (FPA) that are applicable to it.

## ARTICLE 8 — PURCHASE OF GOODS,WORKS AND SERVICES

### 8.1 Rules for purchasing goods, works or services

8.1.1 If necessary to implement the specific action, the KIC Partners may purchase goods, works or services.

The KIC Partners must make such purchases ensuring the best value for money or, if appropriate, the lowest price. In doing so, they must avoid any conflict of interests (see Article 41 FPA).

The KIC Partners must ensure that the EIT, the 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 their contractors.

8.1.2 KIC Partners that are 'contracting authorities' within the meaning of Directive 2004/18/EC<sup>6</sup> (or 2014/24/EU<sup>7</sup>) or 'contracting entities' within the meaning of Directive

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\* Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts (OJ L 134, 30.04.2004, p. 114).

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.03.2014, p. 65).



2004/17/EC<sup>8</sup> (or 2014/25/EU<sup>9</sup>) must comply with the applicable national law on public procurement.

## 8.2 Consequences of non-compliance

If a KIC Partner breaches any of its obligations under Article 8.11, the costs related to the contract concerned will be ineligible (see Article 5) and will be rejected (see Article 48 FPA).

If a KIC Partner breaches any of its obligations under Article 8.1.2, 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 the Framework Partnership Agreement.

## ARTICLE 9 – USE OF IN-KIND CONTRIBUTIONS PROVIDED BY THIRD PARTIES AGAINST PAYMENT

### 9.1 Rules for the use of in-kind contributions against payment

If necessary to implement the specific action, the KIC Partners may use in-kind contributions provided by third parties against payment.

The KIC Partners may declare costs related to the payment of in-kind contributions as eligible (see Article 5), up to the third parties' costs for the seconded persons, contributed equipment, infrastructure or other assets or other contributed goods and services.

The third parties and their contributions must be set out in Annex 1. The EIT may however approve in-kind contributions not set out in Annex 1 without amendment (see Article 61 FPA), if:

they are specifically justified in the final report, and

their use does not entail changes to the Specific Agreement which would call into question the decision awarding the specific grant or breach the principle of equal treatment of applicants or the KICs.

The KIC Partners must ensure that the EIT, the 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.

- 
- Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.04.2004, p. 1).
  - Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.03.2014, p. 243).

## 9.2 Consequences of non-compliance

If a KIC Partner breaches any of its obligations under this Article, the costs related to the payment of the in-kind contribution will be ineligible (see Article 5) and will be rejected (see Article 48 FPA).

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

## ARTICLE 10 – USE OF IN-KIND CONTRIBUTIONS PROVIDED BY THIRD PARTIES FREE OF CHARGE

### 10.1 Rules for the use of in-kind contributions free of charge

If necessary to implement the specific action, the KIC Partners may use in-kind contributions provided by third parties free of charge.

The KIC Partners may declare costs incurred by the third parties for the seconded persons, contributed equipment, infrastructure or other assets or other contributed goods and services as eligible in accordance with Article 5.

The third parties and their contributions must be set out in Annex 1. The EIT may however approve in-kind contributions not set out in Annex 1 without amendment (see Article 61 FPA), if:

they are specifically justified in the final report, and

their use does not entail changes to the Specific Agreement which would call into question the decision awarding the specific grant or breach the principle of equal treatment of applicants.

The KIC Partners must ensure that the EIT, the 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.

### 10.2 Consequences of non-compliance

If a KIC Partner breaches any of its obligations under this Article, the costs incurred by the third parties related to the in-kind contribution will be ineligible (see Article 5) and will be rejected (see Article 48 FPA).

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

## ARTICLE 11 – IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS

### 11.1 Rules for subcontracting action tasks

11.1.1 If necessary to implement the specific action, the KIC Partners may award subcontracts covering the implementation of certain action tasks described in Annex 1.

Subcontracting may cover only a limited part of the specific action.

The KIC Partners must award the subcontracts ensuring the best value for money or, if appropriate, the lowest price. In doing so, they must avoid any conflict of interests (see Article 41 FPA).

The tasks to be implemented and the estimated cost for each subcontract must be set out in Annex 1. The EIT may however approve subcontracts not set out in Annex 1 without amendment (see Article 61 FPA), if:

they are specifically justified in the final report, and

they do not entail changes to the Specific Agreement which would call into question the decision awarding the specific grant or breach the principle of equal treatment of applicants or the KICs.

The KIC Partners must ensure that the EIT, the 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 Framework Partnership Agreement also towards their subcontractors.

11.1.2 The KIC Partners must ensure that their obligations under Articles 41, 42, 44 and 52 of the Framework Partnership Agreement also apply to the subcontractors.

KIC Partners acting as 'contracting authorities' within the meaning of Directive 2004/18/EC (or 2014/24/EU) or as 'contracting entities' within the meaning of Directive 2004/17/EC (or 2014/25/EU) must comply with the applicable national law on public procurement.

### 11.2 Consequences of non-compliance

If a KIC Partner breaches any of its obligations under Article 11.1.1, the costs related to the subcontract concerned will be ineligible (see Article 5) and will be rejected (see Article 48 FPA).

If a KIC Partner breaches any of its obligations under Article 11.1.2, 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 (FPA).

## ARTICLE 12 – IMPLEMENTATION OF ACTION TASKS BY LINKED THIRD PARTIES

### 12.1 Rules for calling upon linked third parties to implement part of the specific action

12.1.1 The linked third parties listed in Annex 5 to the FPA may implement action tasks attributed to them in Annex 1.

They may declare as eligible the costs they incur for implementing the action tasks in accordance with Article 5.

The KIC Partners must ensure that EIT, the 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 their linked third parties.

12.1.2 The KIC Partners must ensure that their obligations under Articles 24, 26, 41, 42 and 44 FPA also apply to their linked third parties.

### 12.2 Consequences of non-compliance

If any obligation under Article 12.1.1 is breached, the costs of the linked third party will be ineligible (see Article 5) and will be rejected (see Article 48 FPA).

If any obligation under Article 12.1.2 is breached, 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.

## ARTICLE 13 – FINANCIAL SUPPORT TO THIRD PARTIES

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

13.1.1 The KIC 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 KIC 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 KIC 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 KIC 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 KIC 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 KIC 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 KIC 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 KIC 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.

ARTICLE 13a- SUPPORT TO OR IMPLEMENTATION OF TRANS-NATIONAL PROJECTS

Not applicable

ARTICLE 14 — PROVISION OF TRANS-NATIONAL OR VIRTUAL ACCESS TO RESEARCH INFRASTRUCTURE

Not applicable

SECTION 2 — RIGHTS AND OBLIGATIONS RELATED TO THE GRANT ADMINISTRATION

ARTICLE 15- SUBMISSION OF DELIVERABLES

15.1 Obligation to submit deliverables

The KIC LE must submit the 'deliverables' identified in Annex 1, in accordance with the timing and conditions set out in it.

15.2 Consequences of non-compliance

If the KIC LE breaches any of its obligations under this Article, the EIT may apply any of the measures described in Section 5 of Chapter 3 of the Framework Partnership Agreement (FPA).

ARTICLE 16- REPORTING — PAYMENT REQUESTS

16.1 Obligation to submit reports

The KIC LE must submit to the EIT (see Article 58 FPA) the final report set out in this Article. This report includes the request for payment of the balance and must be drawn up in conformity with EIT guidelines on reporting and using the forms and templates provided by the EIT (see Article 58 FPA).

16.2 Reporting period

The specific action covers one reporting period from January to December.

16.3 Periodic reports-Requests for interim payments

Not applicable

16.4 Final report-Request for payment of the balance

The KIC LE must submit the final report within 90 days following the end of the period set out in Article 3.

The final report must include the following:



(a) a 'technical report' containing:

- (i) an explanation of the work carried out by the KIC Partners in implementing the specific action;
- (ii) an overview of the progress towards the objectives of the specific action, including milestones and deliverables identified in Annex 1;

This report must include explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out;

- (iii) a summary for publication by the EIT;
- (iv) an overview of the results and their exploitation and dissemination;
- (v) the conclusions on the specific action, and
- (vi) a description of the socio-economic impact of the specific action;

(b) a 'financial report' containing:

- (i) an 'individual financial statement' (see Annex 3) from each KIC Partner and from each linked third party, for the period set out in Article 3.

The individual financial statement must detail the eligible costs (actual costs, unit costs, flat-rate costs and lump sum costs; see Article 5) for each budget category (see Annex 2).

The KIC Partners and linked third parties must declare all eligible costs, even if – for actual costs, unit costs and flat-rate costs – they exceed the amounts indicated in the estimated budget (see Annex 2). Amounts which are not declared in the individual financial statement will not be taken into account by the EIT.

The individual financial statements must also detail the receipts of the specific action (see Article 10 FPA).

Each KIC Partner and each linked third party must certify that:

the information provided is full, reliable and true;

the costs declared are eligible (see Article 5);

the costs can be substantiated by adequate records and supporting documentation (see Article 24 FPA) that will be produced upon request (see



Article 23 FPA) or in the context of checks, reviews, audits and investigations (see Article 28 FPA), and

that all the receipts have been declared (see Article 10 FPA);

- (ii) an explanation of the use of resources and the information on subcontracting (see Article 18 FPA) and in-kind contributions provided by third parties (see Articles 16 and 17 FPA) from each KIC Partner and from each linked third party for the period set out in Article 3;
- (iii) a 'summary financial statement', consolidating the individual financial statements including the request for payment of the balance and
- (iv) a 'certificate on the financial statement' (drawn up in accordance with Annex 4) for each KIC Partner and for each linked third party, if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Articles 4.2 and 5.2. Point A).

#### 16.5 Information on cumulative expenditure occurred

Not applicable

#### 16.6 Currency for financial statements and conversion into euro

Financial statements must be drafted in euro.

KIC Partners and linked third parties with accounting established in a currency other than the euro must convert the costs recorded in their accounts into euro at the average of the daily exchange rates published in the C series of the Official Journal of the European Union calculated over the corresponding reporting period.

If no daily euro exchange rate is published in the Official Journal of the European Union for the currency in question, they must be converted at the average of the monthly accounting rates published on the Commission's website calculated over the corresponding reporting period.

KIC Partners and linked third parties with accounting established in euro must convert costs incurred in another currency into euro according to their usual accounting practices.

#### 16.7 Language of reports

The final report must be submitted in English.



## 16.8 Consequences of non-compliance

If the final report submitted does not comply with this Article, the EIT may suspend the payment deadline (see Article 53 FPA) and apply any of the other measures described in Section 5 of Chapter 3 of the Framework Partnership Agreement (FPA).

If the KIC LE breaches its obligation to submit the final report and if it fails to comply with this obligation within 30 days following a written reminder sent by the EIT, the EIT may terminate the Specific Agreement (see Article 56 FPA) or apply any of the other measures described in Section 5 of Chapter 3 of the Framework Partnership Agreement (FPA).

## ARTICLE 17 – PAYMENTS AND PAYMENT ARRANGEMENTS

### 17.1 Payments to be made

The following payments will be made to the KIC LE:

one pre-financing payment;

one payment of the balance, on the basis of the request for payment of the balance (see Article 16).

### 17.2 Pre-financing payment- Amount- Amount retained for the Guarantee Fund

The aim of the pre-financing is to provide the KIC Partners with a float.

It remains the property of the EIT until the payment of the balance.

The amount of the pre-financing payment will be EUR 24,342,670.80 (twenty-four million, three hundred forty-two thousand, six hundred seventy euros and eighty eurocents).

The EIT will — except if Article 54 FPA applies — make the pre-financing payment to the KIC LE within 30 days either from the entry into force of the Specific Agreement (see Article 21) or from 10 days before the starting date of the specific action (see Article 3), whichever is the latest.

An amount of EUR 1,738,762.20 (one million, seven hundred thirty-eight thousand, seven hundred sixty-two euros and twenty eurocents), corresponding to 5% of the maximum grant amount (see Article 4.2), is retained by the EIT from the pre-financing payment and transferred into the 'Guarantee Fund'.

### 17.3 Interim payments- Amount- Calculation

Not applicable

#### 17.4 Payment of the balance- Amount- Calculation-Release of the amount retained for the Guarantee Fund

The payment of the balance reimburses the remaining part of the eligible costs incurred by the KIC Partners for the implementation of the specific action.

If the total amount of earlier payments is greater than the final grant amount (see Article 10 FPA), the payment of the balance takes the form of a recovery (see Article 50 FPA).

If the total amount of earlier payments is lower than the final grant amount, the EIT will pay the balance within 90 days from receiving the final report (see Article 16), except if Articles 53 or 54 FPA apply.

Payment is subject to the approval of the final report. Its approval does not imply recognition of the compliance, authenticity, completeness or correctness of its content.

The amount due as the balance is calculated by the EIT by deducting the pre-financing payment already made, from the final grant amount determined in accordance with Article 10 FPA:

{final grant amount (see Article 10 of the Framework Partnership Agreement)

minus

{pre-financing payment (if any) made}}.

At the payment of the balance, the amount retained for the Guarantee Fund (see above) will be released and:

if the balance is positive: the amount released will be paid in full to the KIC LE together with the amount due as the balance;

if the balance is negative (payment of the balance taking the form of recovery): it will be deducted from the amount released (see Article 50 FPA). If the resulting amount:

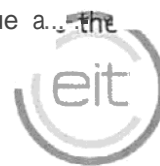
is positive, it will be paid to the KIC LE

is negative, it will be recovered.

The amount to be paid may however be offset -without the KIC Partner's consent — against any other amount owed by a KIC Partner to the EIT, up to the maximum EIT contribution indicated, for that KIC Partner, in the estimated budget (see Annex 2).

#### 17.5 Notification of amounts due

When making payments, the EIT will formally notify to the KIC LE the amount due as the payment of the balance, specifying the final grant amount.



In the case of reduction of the specific grant or recovery of undue amounts, the notification will be preceded by the contradictory procedure set out in Articles 49 and 50 FPA.

#### 17.6 Currency for payments

The EIT will make all payments in euro.

#### 17.7 Payments to the KIC LE – Distribution to the KIC Partners

Payments will be made to the KIC LE.

Payments to the KIC LE will discharge the EIT from its payment obligation.

The KIC LE must distribute the payments between the KIC Partners without unjustified delay.

Pre-financing may however be distributed only:

- (a) if the minimum number of KIC Partners set out in the call for proposals has acceded to the Framework and Specific Agreement (see Article 62 FPA) and
- (b) to KIC Partners that have entered into the Specific Agreement (see Article 62 FPA).

#### 17.8 Bank account for payments

All payments will be made to the following bank account:

Name of bank: COMMERZBANK AG

Full name of the account holder: EIT RAW MATERIALS GMBH

Full account number (including bank codes): DE111004 0000 0193 5055 00

IBAN code: DE111004 0000 0193 5055 00

#### 17.9 Costs of payment transfers

The cost of the payment transfers is borne as follows:

the EIT bears the cost of transfers charged by its bank;

the KIC partner bears the cost of transfers charged by its bank;

the party causing a repetition of a transfer bears all costs of the repeated transfer.

#### 17.10 Date of payment

Payments by the EIT are considered to have been carried out on the date when they are debited to its account.



## 17.11 Consequences of non-compliance

17.11.1 If the EIT does not pay within the payment deadlines (see above), the KIC Partners are entitled to late-payment interest at the rate applied by the European Central Bank (ECB) for its main refinancing operations in euros ('reference rate'), plus three and a half points. The reference rate is the rate in force on the first day of the month in which the payment deadline expires, as published in the C series of the Official Journal of the European Union.

If the late-payment interest is lower than or equal to EUR 200, it will be paid to the KIC LE only upon request submitted within two months of receiving the late payment.

Suspension of the payment deadline or payments (see Articles 53 and 54 FPA) will not be considered as late payment.

Late-payment interest covers the period running from the day following the due date for payment (see above), up to and including the date of payment.

Late-payment interest is not considered for the purposes of calculating the final grant amount.

17.11.2 If the KIC LE breaches any of its obligations under this Article, the specific grant may be reduced (see Article 49 FPA) and the Specific Agreement may be terminated (see Article 56 FPA).

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

## SECTION 3 RIGHTS AND OBLIGATIONS RELATED TO PRE-EXISTING RIGHTS (BACKGROUND) AND RESULTS

### ARTICLE 18 – ADDITIONAL RIGHTS AND OBLIGATIONS RELATED TO BACKGROUND AND RESULTS

Not applicable

## CHAPTER 5 DIVISION OF PARTNERS' ROLES AND RESPONSIBILITIES — RELATIONSHIP WITH COMPLEMENTARY BENEFICIARIES- RELATIONSHIP WITH PARTICIPANTS OF A JOINT ACTION

### ARTICLE 19 – DIVISION OF PARTNERS' ROLES AND RESPONSIBILITIES- RELATIONSHIP WITH COMPLEMENTARY BENEFICIARIES- RELATIONSHIP WITH PARTICIPANTS OF A JOINT ACTION

#### 19.1 Relationship with complementary beneficiaries — Collaboration agreement

Not applicable

#### 19.2 Relationship with partners of a joint action — Coordination agreement

Not applicable

### 19.3 Governance

19.3.1 The KIC LE and KIC Partners must have a governance structure that:

- a) Reflects the diversity in the composition of the partnership, in particular the balance within the knowledge triangle;
- b) Separates ownership/membership from operational management;
- c) Ensures an open and high-quality decision-making process, composed of top-management from KIC Partners' as well as independent high-level members;
- d) Separates the supervisory function from the operations and integrates a system of checks and balances, the body with supervisory function should have an independent chairperson;
- e) Has a size allowing to function in an effective and efficient way.

The members of the governance structure must act in the best interest of the KIC, safeguarding its goals, mission and identity, in an independent way.

19.3.2. The KIC LE and KIC Partners must have an effective operational structure ensuring that the KIC management has executive power to implement the integrated KIC Strategic Agenda and yearly KIC Business Plans.

The KIC management must act in the best interest of the KIC, safeguarding its goals, mission and identity, independently from the particular interest of individual KIC Partners.

19.3.3. The KIC LE and KIC Partners must have a code of good conduct including a policy on conflict of interests.

19.3.4. These principles shall be transposed in the KIC Internal Agreements.

19.3.5. The KIC LE will notify the EIT of the above arrangements, its code of conduct and any modifications thereof.

## CHAPTER 6 REJECTION OF COSTS-REDUCTION OF THE GRANT-RECOVERY- PENALTIES — DAMAGES- SUSPENSION -TERMINATION — FORCE MAJEURE

### ARTICLE 20— ADDITIONAL GROUNDS FOR TERMINATION

Not applicable



## CHAPTER 7 FINAL PROVISIONS

### ARTICLE 21 — ENTRY INTO FORCE OF THE SPECIFIC AGREEMENT

The Specific Agreement will enter into force on the day of signature by the EIT or the KIC LE, depending on which is later.

### SIGNATURES

For the KIC LE

For the EIT

Karen Hanghøj, CEO

Martin KERN, Interim Director

Done in English

Done in English

at Budapest on 14.2. 2017

at Budapest on 14.2. 2017





