



EIT RawMaterials

GENERAL TERMS AND CONDITIONS OF FINANCIAL SUPPORT TO THIRD PARTIES (SUB-GRANTING)

under the

EIT RawMaterials GmbH - European Institute of Innovation and Technology 2021 – 2027 Partnership Agreement PA2021/EIT/EIT RawMaterials of 19.05.2021 incl. its Amendment No. 1 of 16 December 2022

EIT RawMaterials GmbH - European Institute of Innovation and Technology Grant Agreement 2023-2025¹,

KIC RawMaterials Internal Agreement of 04 December 2015²³

¹ EIT Reference Project 101113034 — EIT RM BP23-25 — HORIZON-EIT-2023-2025-KIC., based on the multi-annual Model Grant Agreement (“**MGA**”) provided by the European Commission/EIT, available at [general-mga_horizon-euratomeu.pdf \(europa.eu\)](https://general-mga.horizon-euratomeu.pdf). References to the GA2023-2025 EIT RM herein shall be interpreted as references to the MGA unless expressly advised otherwise by EIT RM

² Available upon request from EIT RM

³ in each case as amended from time to time

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EFFECTIVE DATE: 1 January 2023

WHEREAS:

- (A) EIT RawMaterials GmbH ("**EIT RM**", "**EIT RawMaterials**" or "**KIC LE**"), in its capacity as acting legal entity of the Knowledge and Innovation Community EIT RawMaterials ("**KIC**") comprising EIT RawMaterials GmbH and the other KIC Partners as associated in the EIT RawMaterials e.V., registered in the Association Register of the Amtsgericht (Local Court) of Berlin-Charlottenburg VR 34088 B, has entered into a Partnership Agreement ("**PA2021/EIT/EIT RawMaterials**" or "**PA**") with the European Institute of Innovation and Technology ("**EIT**") dated 19.05.2021 amended by its Amendment No. 1 of 16.12.2022, with the effective date of 01.01.2021, establishing a long term cooperation laying down the general terms and conditions under which the KIC must operate as an institutionalised European partnership under the Horizon Europe Programme.
- (B) Under the terms of the PA2021/EIT/EIT RawMaterials, the KIC LE has been awarded a grant ("**EIT Grant**") for the action 2023-2025 by the EIT, to carry out a series of KIC Added Value Activities (each a "**KAVA**") in accordance with the EIT Regulation⁴, contributing to the integration of the knowledge triangle of education, business, research and innovation, in a thematically focused innovation system (the "**Knowledge Triangle Activities**"), and contributing to the overall objectives of the EIT and, for this purpose, has entered into a Grant Agreement with the EIT No. 101113034 — EIT RM BP23-25 — HORIZON-EIT-2023-2025-KIC (the "**GA2023-2025 EIT RM**" or "**GA**"), with effective date of 01.01.2023, laying down the provisions concerning the implementation of the KIC business plan as submitted by KIC LE to and approved by the EIT ("**KIC Business Plan**") through grants, which, among others, allows and requires the KIC LE to provide financial support to third parties for projects and actions related to KAVAs (the "**Financial Support to Third Parties**").
- (C) Under the terms of the PA 2021/EIT/EIT RawMaterials and the GA2023-2025 EIT RM, the KIC LE, in its capacity of beneficiary under the GA2023-2025 EIT RM, must respect certain conditions including in terms of transparency, non-discrimination, gender mainstreaming, sound financial management and no conflict of interest. The KIC LE must further ensure that other conditions in terms of eligibility of costs, financial control and audit mechanism, IPR rules and communication, dissemination and visibility rules, standards for monitoring and reporting and rights for i.a. EIT, OLAF and Court of Auditors as provided for in the GA2023-2025 EIT RM are put in place with any party receiving Financial Support to Third Parties ("**Third Party Receiving Financial Support**" or "**Recipient**").

NOW, THEREFORE, THE FOLLOWING GENERAL TERMS AND CONDITIONS ("**TERMS AND CONDITIONS**" OR "**T&C**") OF FINANCIAL SUPPORT TO THIRD PARTIES_(SUB-GRANTING) SHALL APPLY TO (A) ANY FINANCIAL SUPPORT TO THIRD PARTIES PROVIDED BY EIT RAWMATERIALS USING MONIES OF THE EIT GRANT AND/OR FROM ITS OWN RESOURCES AND (B) ANY ADDITIONAL ACTIVITIES, PROJECTS AND PRIZES THAT ARE NOT FUNDED UNDER THE EIT GRANT ("**NON-EIT FUNDED ACTIVITIES**" OR "**NEFAs**"), UNLESS EXPRESSLY AGREED OTHERWISE:

⁴ Regulation (EU) 2021/819 of the European Parliament and of the Council of May 20, 2021 as amended or substituted from time to time.



Article 1: Definitions

1.1 Definitions

1.1.1 Words beginning with a capital letter shall have the meaning defined – in the order of priority - herein, the Project Agreement (as defined below), the GA2023-2025 EIT RM, the PA 2021/EIT/EIT RawMaterials or in the Rules of Participation for Horizon Europe⁵, in each case including their respective Annexes and as amended from time to time.

1.1.2 Whenever used in these T&C, the words 'include', 'includes' and 'including' shall be deemed to be followed by the phrase 'without limitation'.

1.2 Certain Definitions

“Authorised Representative” shall mean the person or persons duly authorised to sign the Project Agreement, including its Annexes, on behalf of a Party.

“Co-funding” is the Recipient’s contribution to a Project.

“Effective Date” shall mean the date first referenced above.

“EIT” shall mean the European Institute of Innovation and Technology regulated by the EIT Regulation.

“EIT Regulation” shall mean the Regulation (EU) 2021/819 of the European Parliament and of the Council of May 20, 2021, as may be amended or substituted from time to time.

“Financial Support to Third Parties” or **“Financial Support”** or **“Funding”** shall mean any support by financial means provided by EIT RM including in the form of grants, prizes or similar forms of support whether for KAVAs or otherwise, as described in Article 9.4 and Annex 5 of the GA2023-2025 EIT RM, NEFAs or otherwise.

“Force Majeure” shall mean any situation or event that

- prevents either Party from fulfilling their obligations under the Project Agreement,
- was unforeseeable, exceptional situation and beyond the Parties’ control,
- was not due to error or negligence on their part (or on the part of other participants involved in the action), and
- proves to be inevitable in spite of exercising all due diligence.

“Grant Agreement” or **“GA2023-2025 EIT RM”** or **“GA”** shall mean the agreement EIT No. 101113034 — EIT RM BP23-25 — HORIZON-EIT-2023-2025-KIC, effective as of 01 January 2023 signed by the EIT and the KIC LE, setting out the rights and obligations applicable to the EIT Grant awarded for the implementation of the KIC Business Plan, as per the Horizon Europe Model Grant Agreement (“MGA”) provided by the European Commission/EIT⁶ and available on the EIT RM website⁷.

⁵ [EUR-Lex - 32021R0695 - EN - EUR-Lex \(europa.eu\)](#)

⁶ Horizon Europe Model Grant Agreement (“MGA”) provided by the European Commission/EIT, available at [general-mga_horizon-eur-atom_en.pdf \(europa.eu\)](#), as amended from time to time

⁷ www.eitrawmaterials.eu



“IP Policy” shall mean the KIC EIT RawMaterials’s IP Policy as available on the EIT RawMaterials website⁸.

“KIC Added Value Activity” or “KAVA” shall mean activities carried out by the KIC – through KIC LE or otherwise – in accordance with the KIC Business Plan, contributing to the integration of the knowledge triangle, including the establishment, administrative and coordination activities of the KIC, and contributing to the overall objectives of the EIT.

“KIC Business Plan” shall mean the KIC business plan as defined in the PA.

“Non-EIT funded activities” or “NEFAs” shall mean activities carried out by EIT RawMaterials. without using EIT Grant monies. They shall be described as part of the EIT RM Business Plan objectives and expected results. They must contribute to the EIT RM knowledge triangle integration.

“Partnership Agreement” or “PA 2021/EIT/EIT RawMaterials” or “PA” shall mean the agreement laying down the general terms and conditions under which the KIC EIT RawMaterials must operate as an institutionalised European partnership, entered into by and between the EIT and the KIC LE, 19.05.2021 with an effective date of January 1, 2021, incl. its Amendment No. 1 of 16 December 2022, as may be amended from time to time.

“Party” or “Parties” shall mean the parties to the Project Agreement including KIC LE and the Recipient(s).

“Portal Participant Register” shall be the portal of even name organised by the European Commission and available at [Participant register \(europa.eu\)](https://participant-register.europa.eu), as amended or substituted from time to time.

“Project(s)” shall mean the action(s) contributing to the KIC Business Plan, which the Recipient shall implement, as described in the Project Agreement. A Project may consist of KAVA(s) and/or NEFA(s). A Recipient may be involved in multiple Projects under the KIC Business Plan.

“Project Agreement” or “ProjAg” shall mean the agreement including its annexes to be entered into for (a) certain Project(s), between the KIC LE and the Recipient(s) involved in such Project(s), laying down the specific agreements concerning the Project(s). Where a Project does not require an individual agreement between the Recipients and KIC LE, e.g. when consisting of a prize, the term “Project Agreement” shall mean the conditions for the prize or other Project as published by KIC LE.

“Recipient” shall mean any Party receiving Financial Support to Third Parties.

“Rules for Participation in Horizon Europe” shall mean the rules available at [EUR-Lex - 32021R0695 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2021/10695/oj), as amended or substituted from time to time.

“Third Party Receiving Financial Support” or “Recipient” shall mean a recipient of Financial Support to Third Parties, .

Article 2: Purpose, Project Rules and Regulations

⁸ www.eitrawmaterials.eu



2.1 Purpose

The purpose of these T&C is to lay down the terms and conditions governing the contractual arrangements between the Parties regarding their respective rights and obligations pertaining to the implementation by the Recipient of KAVAs, NEFAs or other Projects, under the KIC Business Plan or otherwise receiving Financial Support to Third Parties by KIC LE.

The contractual arrangements will in particular pertain to the Project and its characteristics, monitoring and reporting, IPR rules, communication, dissemination and visibility rules, information obligations, checks, reviews, audits and investigations, financial provisions (including eligibility rules for KAVAs), division of roles and responsibility, inter alia liability, non-disclosure of information and dispute resolution.

2.2 Project Rules and Regulations

Unless expressly agreed otherwise between the Parties, any Project shall be governed – in the order of priority, unless provided otherwise in the Project Agreement or by mandatory law, and in each case as may be amended from time to time – by

- (a) the Project Agreement including its Annexes,
- (b) these Terms and Conditions,
- (c) the KIC RawMaterials Internal Agreement of 04 December 2015,
- (d) the Grant Agreement,
- (e) the Partnership Agreement,
- (f) the Rules of Participation for Horizon Europe and other EU rules and regulations
- (g) the law applicable.

Provided that where these T&C and/or the KIC RawMaterials Internal Agreement of 04 December 2015 are in conflict with or contain less stringent provisions than the GA2023-2025 EIT RM and/or the PA 2021/EIT/EIT RawMaterials, the GA2023-2025 EIT RM or PA 2021/EIT/EIT RawMaterials, as the case may be, shall prevail.

The Recipient acknowledges and agrees that in these T&C, certain conditions of the GA2023-2025 EIT RM are transposed in the legal arrangement between the KIC LE and the Recipient, in order to ensure that the KIC LE shall meet its obligations and exercise its rights (including those towards the EIT) under the GA2023-2025 EIT RM.

Article 3: Entry into force and duration of these T&C, Project termination

3.1 Entry into force and duration of these T&C

These T&C shall have effect from the Effective Date until being modified, amended or revoked by the KIC EIT RawMaterials General Assembly or other competent EIT RawMaterials body. Rights and obligations accrued under it until such modification, amendment or revocation shall remain unaffected.

3.2 Project Termination

3.2.1. Breach by KIC LE -Termination by the Recipient



3.2.1.1. In the event that the KIC LE is in breach of its obligations under the Project Agreement, the Recipient may give formal notice to the KIC LE requiring that such breach will be remedied within 90 calendar days of this formal notice, unless such breach cannot be remedied.

If such breach is substantial and is not remedied within that period of 90 calendar days or, is not capable of remedy, the Recipient may decide to terminate the Project Agreement upon notice.

3.2.1.2. The Recipient may terminate the Project Agreement with immediate effect through written notice to the KIC LE, if the KIC LE is subject to an event of Force Majeure, which prevents the KIC LE from correct performance of its obligations hereunder and such circumstances have lasted, or can reasonably be expected to last more than 120 calendar days.

3.2.2. Breach by Recipient - Termination by the KIC LE

3.2.2.1. In the event that the Recipient is in breach of its obligations under the Project Agreement, the KIC LE may give formal notice to the Recipient requiring that such breach will be remedied within 14 calendar days (or other time specified by KIC LE not exceeding 30 calendar days) of this formal notice, unless such breach cannot be remedied.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the KIC LE may decide to declare the Recipient to be a defaulting Party and to decide on the consequences thereof which may include termination of the Project Agreement upon notice and other measures (see 3.3.2). Such serious breaches are for example improper implementation of the Project(s), Non-Achievement of Milestones or Project Underperformance (in each case as defined in the Project Agreement), non-compliance with the call conditions, submission of false information or incomplete information, failure to provide required information, breach of ethics or security rules (if applicable).

3.2.2.2. The KIC LE may terminate the Project Agreement with immediate effect through written notice to the Recipient, if the Recipient is subject to an event of Force Majeure, which prevents the Recipient from correct performance of its obligations hereunder and such circumstances have lasted, or can reasonably be expected to last more than 120 calendar days.

3.2.2.3. Without prejudice to sections 3.2.2.1, 3.2.2.2, KIC LE may also terminate the Project Agreement if the Recipient is in breach of any of its material obligations under any other binding regulation or agreement with the KIC LE, or its material obligations pertaining to its membership in the KIC EIT RawMaterials, always provided that such breach is duly notified to the Recipient, has not been cured (if capable of curing) and results in a termination due to breach in accordance with the applicable provisions for such termination. The KIC LE may also terminate any agreement with the defaulting Recipient, if the Project Agreement or other binding regulation or agreement or membership obligations are a prerequisite for the execution of such other agreement.

3.2.2.4. If the GA2023-2025 EIT RM is terminated by the EIT or the KIC LE, the KIC LE shall have the right to terminate any Project or other Agreement concluded thereunder upon notice to the Recipient, subject to the provisions surviving the expiration of termination under article 3.3.1 of these T&C.

3.2.2.5. The KIC LE may at any time terminate the Project Agreement immediately upon notice if one of the following events occurs:



- a change to the legal, financial, technical, organisational or ownership situation of the Recipient is likely to substantially affect or delay the implementation of the Project(s) it is involved in or calls into question the decision to select the Project(s) (including changes linked to one of the exclusion grounds listed in the declaration of honour, signed not later than by the time of the signature of the Project Agreement);
- the Recipient is subject to bankruptcy proceedings or similar (including insolvency, winding-up, administration by a liquidator or court, arrangement with creditors, suspension of business activities, etc.);
- the Recipient is in breach of social security or tax obligations;
- the Recipient (or person having powers of representation, decision-making or control, or person essential for the implementation of the projects) has been found guilty of grave professional misconduct;
- the Recipient (or person having powers of representation, decision-making or control, or person essential for the implementation of the projects) has committed fraud, corruption, or is involved in a criminal organisation, money laundering, terrorism related crimes (including terrorism financing), child labour or human trafficking;
- the Recipient (or person having powers of representation, decision-making or control, or person essential for the implementation of the projects) was created under a different jurisdiction with the intent to circumvent fiscal, social or other legal obligations in the country of origin (or created another entity with this purpose);
- the Recipient (or person having powers of representation, decision-making or control, or person essential for the implementation of the Projects) has committed substantial errors, irregularities or fraud.

3.3 Effects of termination

3.3.1. Survival of rights and obligations

After termination, the Recipient's obligations (in particular Articles 17 (non-disclosure of information), 10 (IPR), 16 (liability), 11 (communication, dissemination and visibility rules), 6.3 (reporting), 13 (checks, reviews, audits and investigations), and 19.7 (applicable law) of these T&C, and articles 26 (impact evaluation), 27 (rejections), 28 (grant reduction) and 42 (assignment of claims) of the GA2023-2025 EIT RM continue to apply.

Termination shall not affect any rights or obligations of the Parties incurred prior to the date of termination, unless otherwise stipulated herein or agreed between the Parties. This includes the obligation to provide all reporting, input, deliverables, and documents for the period that the Project Agreement was still in force and effect.

3.3.2. Measures towards defaulting Recipient

KIC LE shall have the right to stop or reorient the scope of the KAVA(s) or other project in which the defaulting Recipient is involved. KIC LE shall also have the right to suspend any payment towards the defaulting Recipient and to request the defaulting Recipient to return the funds received (recovery or withdrawal of funds) without prejudice to its right to claim compensation for damages caused by Recipient's breach.



For the avoidance of doubt, KIC LE may decide to claim funds back if and to the extent the Project implemented so far has not started or rendered, in the reasonable discretion of the KIC LE, any substantial innovation or other benefit, in particular due to its early termination.

3.3.3. Termination report

Without prejudice to its other reporting obligations, the Recipient must – within 60 days from when termination takes effect – submit a termination report, for the open reporting period under the Project(s) until termination, containing an overview of the progress of the work, the financial statement, the explanation and proof on the use of the Grant and resources, and if applicable, the certificate on the financial statement to the KIC LE.

The KIC LE will calculate the amount that might be due to the Recipient on the basis of the report submitted and taking into account the costs incurred and contributions for KAVAs or other Projects implemented before the end of work date (see Article 7 of these T&C). Costs relating to contracts due for execution only after the end of work are not eligible.

If the KIC LE does not receive the termination report within the deadline, only costs and contributions which are included in an approved [periodic report] will be taken into account (no costs/contributions if no periodic report was ever approved).

Any other rights or remedies the KIC LE may be entitled to due to or in connection with the early termination of the Project Agreement and/or the circumstances causing the early termination, shall remain unaffected.

3.3.4. Other agreement(s)

For the avoidance of doubt, termination of the Project Agreement shall not release the Parties from their obligations under other agreement(s) they have concluded, unless they have also been terminated.

Article 4: Project(s)

4.1 General Principles

The Recipient is fully responsible towards the KIC LE for implementing its tasks in the Project(s).

The Recipient must:

- implement the Project Agreements including these T&C to the best of its abilities, in good faith and in accordance with all the obligations and terms and conditions it sets out.
- have the appropriate resources to implement the Project(s) under its own responsibility. If the Recipient relies on its affiliated entities or other third parties (see Article 4.4 of these T&C), the Recipient retains sole responsibility towards EIT, the KIC LE and the other Recipients involved in the Project(s). If the KIC LE requires joint and several liability of affiliated entities they must sign the declaration set out in Annex 3a to the GA2023-2025 EIT RM and may be held liable in case of enforced recoveries against their Recipients (see Article 22.2 and 22.4 of the GA2023-2025 EIT RM).
- remain eligible under the Horizon Europe programme funding for the entire duration of the Project Agreement. Costs and contributions will be eligible only as long as the Recipient and the Projects are eligible in line with the GA2023-2025 EIT RM and other EIT/EU rules and regulations.

- promptly notify to the KIC LE any significant information, fact, problem or delay likely to affect its participation in the Project(s), especially relating to the events mentioned in 3.2.2.5.
- promptly provide all information reasonably required by the KIC LE for the implementation of the Projects (including mid-term reviews, if any) and the reporting of the costs and other reporting items as set out in the Project Agreement or reasonably required otherwise by the KIC LE.

4.2 Proper implementation of the Project(s)

The Recipient must implement the Project(s) as described in the relevant Project Agreement.

4.3 Consequences of not properly implementing a Project

As a consequence of the KIC LE's monitoring obligations of progress towards KIC strategic objectives and an improper implementation of the Project by the Recipient in accordance with the Project Agreement, the KIC LE, at its own discretion, may decide on the consequences thereof, including:

- (i) re-orient the scope of the Project,
- (ii) reduce the amount of the Financial Support and/or
- (iii) stop a Project pursuant to the Go / no Go process the KIC LE may decide to establish

4.4 Involvement of third parties (including affiliated entities, subcontractors)

4.4.1 Third Parties involved

The third parties which will participate in a Project shall be further described in an annex to the Project Agreement.

Further involvement of third parties in a Project is only allowed after the approval of KIC LE, such approval not to be unreasonably withheld.

4.4.2 Procurement

Subcontracting costs/purchase costs for the Projects (including related duties, taxes and charges, such as non-deductible or non-refundable value added tax (VAT)) are eligible, if they are calculated on the basis of the costs actually incurred, fulfil the general eligibility conditions as established by the EIT, especially in the GA2023-2025 EIT RM, and are awarded using the Recipient's usual purchasing practices — provided these ensure subcontracts/purchase costs with best value for money (or if appropriate the lowest price) and that there is no conflict of interests .

Recipients that are 'contracting authorities/entities' within the meaning of the EU Directives on public procurement must also comply with the applicable national law on public procurement. The tasks to be subcontracted, the estimated cost for each subcontract and the total estimated costs of subcontracting per Recipient must be set out in the Project Agreement.

4.4.3 Other Provisions

The Recipient must ensure that its contractual obligations under Articles 4.2 (proper implementation of the Project), 14 (conflict of interest), 17 (non-disclosure of information), 12 (information, record keeping), 15

(ethics), 11 (visibility rules), of these T&C and any other specific rules for carrying out the Project as described in the relevant Project Agreement including these TC, also apply to the involved third parties.

The Recipient must ensure that the KIC LE, the EIT, and/or the European Commission, the European Anti-Fraud Office (OLAF), European Public Prosecutor's Office (EPPO) and the European Court of Auditors (ECA), can exercise their rights also towards the involved third parties (see Article 13 of these T&C).

4.5 Project Financial Support to be subject to EIT Grant(s)

Any Financial Support envisaged or committed by KIC LE to be provided to a Project, shall be subject to the EIT Grant as envisaged in the KIC Business Plan is approved and provided by the EIT. Any liability of the KIC LE shall be excluded in the event the EIT Grant is not provided as aforementioned. In the event of a reduction or delay of the EIT Grant, the decision on the consequences thereof for the individual Projects included in the Business Plan shall rest with KIC LE in its reasonable discretion, unless a specific individual amount is expressly allocated to the Project by the EIT. In the event the EIT Grant is reduced or withheld by the EIT due to the Recipient not fulfilling its obligations with the KIC LE including with regard to its cost reporting and the eligibility of costs, the consequences thereof shall be borne by the Recipient.

Article 5: Project Contribution – KAVA

5.1 Project contribution

5.1.1. The KIC LE and the Recipient shall each make certain contributions to each Project. These contributions shall be set out in the Project Agreement.

5.1.2. The Recipient shall receive financial contribution by the KIC LE only for its tasks in the Project(s), carried out in accordance with the relevant Project Agreement, from:

- (i) funds made available to the KIC LE by the EIT under the GA2023-2025 EIT RM, and subject to the provisions of Article 5.3 of these T&C regarding eligibility of costs ("**Confirmed Funding EIT**");
 - (ii) the funds put at the disposal of the KIC LE from the KIC membership fees or other sources subject to the provisions governing such fund ("**Confirmed Funding KIC**");
- (i) and (ii) are together referred to as "**Confirmed Funding**".

The Confirmed Funding and the conditions attached to this Confirmed Funding will be further detailed in the relevant Project Agreement.

5.1.3. Other than the Confirmed Funding (and any funding confirmed in the following years, collectively the "**Funding**") there will be no further grants, subsidies, reimbursements or other payments by the KIC LE to the Project(s) and/or the Recipient due to or in connection with the Project(s) unless expressly specified otherwise in the relevant Project Agreement. The Funding shall be the only contribution by KIC LE, the KIC and/or the EIT for the Recipient or other parties involved in the project to cover all costs, expenditures, travel expense, overhead, sub-contractors, duties, tax if any or other payment obligations incurred by the Recipient due to or in connection with the Project.]

5.1.4. The Recipient shall use the Funding transferred by the KIC LE only for the implementation and execution of the relevant Project as reflected in the Project Agreement.

5.2 Project Budget



The Project Budget shall set out – without limitation – the following, for the period until the Project expiry date:

- The maximum amount of the Confirmed Funding;
- The amount of the co-funding by Recipient;]

5.3 Eligibility rules

For EIT funded Actions (“KAVAs”), the eligibility rules of the GA2023-2025 EIT RM (see Article 6 GA2023-2025 EIT RM in particular) are hereby included into these T&C by reference and apply to the Financial Support provided by KIC LE correspondingly.

If the Recipient declares costs or contributions that are ineligible, they will be rejected.

The KIC LE shall be under no obligation to distribute EIT Grant monies to the Recipient unless the eligibility rules of the GA2023-2025 EIT RM are complied with and Recipient has fulfilled all its other obligations pertaining to the implementation of EIT funded KAVA’s under the Project Agreement including these T&C or otherwise.

Unless agreed otherwise by KIC LE, the GA2023-2025 EIT RM eligibility rules shall also apply to any activity receiving Financial Support by KIC LE from monies other than the EIT Grant.

Article 6: Monitoring and reporting

6.1 General monitoring and reporting obligation

6.1.1. The Recipient acknowledges and agrees that the following standards for the monitoring are to be put in place:

- systematic monitoring and review of the Project(s) (e.g. staff management, procurement, financial management, quality control, risk management, distribution and provision of support to final recipients, outputs, activity, financial reports etc.), in the format and timing specified by the KIC LE;
- effective and reliable monitoring and reporting of the Project(s) (including information on indicators, EIT Impact Framework, progress towards financial sustainability, KIC partnership, legality and regularity of the expenditure claimed, etc.), in the format and timing specified by the KIC LE;
- provisions for re-orienting or stopping underperforming Project(s) (with regular ‘go’/‘no go’ decision points, including a payment system linked to milestone achievements) and, for stopped activities, quarterly information of the KIC LE;
- a mechanism to evaluate high potential project outcomes and fast track them towards further investment and rapid development;
- ensure the legality and regularity of the expenditure claimed.

6.1.2. In order to ensure the standards as referred to above, the Recipient acknowledges and agrees that monitoring and reporting is of the essence for EIT RM, the Project Agreement and the Financial Support provided by the KIC LE, including the EIT Grant, hereunder.



6.1.3. The Recipient shall:

- comply with any reporting policy and instructions issued by the KIC LE, in accordance with the timing and conditions it sets out as may be amended/modified by the KIC LE;
- comply with any and all other monitoring and reporting requirements, including any future requirements by the KIC LE and/or as may be established by the KIC LE, as the case may be pursuant to requirements of EIT;
- proactively report any developments which may seriously affect the Project(s) including the achievement of the overall Project target, any milestone thereunder and/or the purpose of the Financial Support immediately upon their respective occurrence.

6.2 Monitoring

The Parties agree to comply with the specific monitoring and evaluation principles as further detailed in the relevant Project Agreement(s), the BlueBook tool (or other digital format amending or substituting it) or otherwise by KIC LE.

6.3 Reporting

Without prejudice to the generality of the foregoing, the Recipient shall comply with the reporting requirements as set out in the Project Agreement.

Article 7: Financial provisions

7.1 Payment Schedule

7.1.1. Pre-financing

The KIC LE may provide one or more prefinancing payments to the Recipient for the implementation of the Project(s).

[Further details concerning the pre-financing shall be agreed upon in the Project Agreement.]

7.1.2. Payment schedule

The KIC LE will complete the payments via instalments linked to milestones / deliverables / acceptance conditions in accordance with the payment schedule further detailed in the Project Agreement(s).

7.2.3. Payment of the balance

The payment of the balance reimburses the remaining part of the eligible costs (in accordance with Article 5.2 of these T&C) and contributions for the implementation of the Project(s).

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

7.2 Eligibility

The Recipient is eligible for any Financial Support, including pre-financing, and payment of the balance if all the following provisions are complied with on a continuous basis during the term of the Project Agreement including these T&C:

- If and when relevant, the Recipient has paid the annual contribution (membership fees) to the KIC;
- The relevant Project Agreement has been signed;
- All relevant eligibility criteria under the Project Agreement including the GA2023-2025 EIT RM included into it by reference are fulfilled;
- the Recipient is not in default under the Project Agreement or another relevant agreement;
- All cost reporting obligations and milestones are complied with up to and including the date of the assessment of the Recipient's eligibility;
- The KIC LE has received the relevant pre-financing or payment of the balance from the EIT.

7.3 Payments

Payment by the KIC LE to the Recipient hereunder, shall be made exclusively (a) via bank transfer and (b) to an account in the country where the Recipient has its registered office or other EU member state. Any change in the bank account shall be notified by the Recipient to KIC LE in writing, which new details shall only be effective (a) five working days after receipt by the KIC LE of the written notice from Recipient and (b) subject to the approval by KIC LE (which approval shall not be unreasonably withheld).

7.4 Recovery - Setoff

7.4.1. *Recovery by KIC LE.*

In the event the Recipient did not use the Funding for the purpose of the Projects or not in accordance with the terms and conditions of the Project Agreement including these T&C, it is under the obligation to return the unused or unjustified amounts within 30 calendar days upon notification from the KIC LE.

7.4.2. Setoff or withholding

KIC LE shall have the right to setoff or withhold payments for any present or future claim KIC LE may have against the Recipient.

Article 8: Financial sustainability

The Recipient acknowledges that KIC EIT RawMaterials including KIC LE has a financial sustainability strategy including diversified revenue streams, as required by the Horizon Europe programme. The Recipient commits to contribute to the financial sustainability strategy elaborated by the KIC LE.

Therefore, the Recipient shall comply with its obligations regarding financial sustainability as further described in more details in the relevant Project Agreement(s) or other specific agreements, between the KIC LE and the Recipient.

Article 9: Division of roles and responsibility



9.1. Either Party shall comply with its obligations towards the other Party under the Project Agreement(s) including these T&C.

9.2. The Recipient has individual financial responsibility for its own financial obligations under the Project Agreement and the co-funding agreed upon ("financial liability").

9.3. The Recipient acknowledges the joint and several liability for the technical implementation of the Project(s) the Recipient is involved in:

The Recipients involved in the same Project are jointly and severally liable for the technical implementation of the relevant Project. If a Recipient fails to implement its part of the Project or in case it withdraws from the Project, the other Recipients in that Project become responsible for implementing this part or completing the Project, without being entitled to any additional funding at Project level for doing so, unless the KIC LE expressly relieves them of this obligation or unless the failure to implement the part of the Project is due to gross negligence of the KIC LE. For the avoidance of doubt, the remaining budget share of the failing or withdrawing the Recipient may – but are not obligated to – be reallocated to the remaining Recipients of that Project to enable them to complete the failing or withdrawing the Recipient's part of the Project.

Within the frame of the KIC Business Plan, joint liability for the technical implementation of the Project must be understood as applying at the level of the Projects.

The Recipient and the other parties involved in the same Project may supplement the liability provisions of this Article 9 in a consortium agreement inter se, but cannot deviate from the provisions of these T&C to the detriment of KIC LE and/or the EIT.

For the avoidance of doubt, when executing coordination or monitoring tasks as required by the PA2021/EIT/EIT RawMaterials or the GA2023-2025 EIT RM, for example, coordinating of reporting (i.a. final reporting, progress monitoring, ...) towards the EIT or otherwise, the KIC LE will neither be jointly and severally liable for the technical implementation of nor financially liable in any way for the Projects.

Article 10: IPR rules

The Recipient acknowledges and agrees that it must comply with the IP Rules of the GA2023-2025 EIT RM and the EIT RM IP Policy, as referred to in the Project Agreement and as applicable from time to time.

Further specific IPR rules for the Project(s) may be set out in the relevant Project Agreement or other agreements pertaining to IP aspects.

Article 11: Communication, dissemination and visibility rules

The Recipient must comply with the Communication, dissemination and visibility rules as provided for in the GA2023-2025 EIT RM (see Article 17, Annex 5 of the GA2023-2025 EIT RM in particular) and the Project Agreement.

Article 12: Information obligations – record keeping

12.1 General information obligations



12.1.1. General

The Recipient must comply with the information obligations as provided for in the GA2023-2025 EIT RM (see art 19, Annex 5 of the GA2023-2025 EIT RM in particular) and the Project Agreement.

12.1.2 Information requests

The Recipient must provide — during the Project(s) or afterwards — any information requested in order to verify eligibility of the costs or contributions declared, proper implementation of the Project(s) and compliance with the other obligations under the Project Agreement. The information provided must be accurate, precise and complete and in the format requested, including electronic format.

12.1.3. Participant Register data updates

The Recipient must keep — at all times, during the Project(s) or afterwards — their information stored in the Portal Participant Register up to date, in particular, their name, address, legal representatives, legal form and organisation.

12.1.4. Information about events and circumstances which impact the Project

The Recipient must immediately inform the KIC LE of any of the following:

- (a) events which are likely to affect or delay the implementation of the Project(s) or affect the EU's financial interests, in particular changes in their legal, financial, technical, organisational or ownership situation (including changes linked to one of the exclusion grounds listed in the declaration of honour to be signed not later than by the date of the signature of the Project Agreement)
- (b) circumstances affecting: (i) the decision to select the Project(s) or (ii) compliance with requirements under the Project Agreement.

12.2 Record keeping

12.2.1. General

The Recipient must comply with the record keeping obligations as provided for in the GA (see art 20, Annex 5 of the GA2023-2025 EIT RM in particular) and the Project Agreement.

12.2.2 Keeping records and supporting documents

Without prejudice to the generality of section 12.2.1 above, the Recipient must — at least until the time-limit set out in the Project Agreement(s) — keep records and other supporting documents to prove the proper implementation of the Project in line with the accepted standards in the respective field (if any).

Article 13: Checks, reviews, audits and investigations

13.1 General



The Recipient must comply with the obligations relating to checks, reviews, audits and investigations as provided for in the GA2023-2025 EIT RM (see art 25, Annex 5 of the GA2023-2025 EIT RM in particular) and the Project Agreement.

13.2 Specific provisions

Without prejudice to the generality of section 12.2.1 above, the Recipient acknowledges and agrees that enabling checks, reviews, audits and investigations is of the essence for the EIT Grant and KIC system. As a consequence thereof, the Recipient shall allow and support any checks, reviews, audits and investigations during the implementation of the Project(s) and afterwards, by the KIC LE, the EIT, and/or the European Commission, the European Anti-Fraud Office (OLAF), European Public Prosecutor's Office (EPPO) and the European Court of Auditors (ECA), deemed necessary by the foregoing in their reasonable discretion to satisfy themselves of the compliance with the obligations under the Project Agreement, including the proper use of the Confirmed EIT Funding.

Article 14: Conflict of interest

14.1 The Recipient acknowledges and agrees:

- to take all measures to prevent any situation where the impartial and objective implementation of the Project Agreement could be compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect interest ('conflict of interests').
- to avoid any conflict of interest in the purchase of services and goods in pursuit of the Project(s).

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

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

14.2 The Recipient acknowledges and agrees to comply with the principles of transparency, non-discrimination and sound financial management.

Article 15: Ethics and values

The Projects must be carried out in line with the ethics and values standards of the European Union including as set forth in article 14 of the GA2023-2025 EIT RM.

Article 16: Liability towards each other

16.1 Limitations of contractual liability

The Parties shall take all the necessary steps to limit or mitigate any damage.

The Recipient must compensate the KIC LE for any damage it sustains as a result of the implementation of the Project or because the Project was not implemented in full compliance with the relevant Project Agreement, provided that it was caused by gross negligence, willful act or by a breach of confidentiality.



No Party shall be responsible to the other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act, gross negligence or by a breach of confidentiality.

The terms of the Project Agreement shall not be construed to amend or limit either Party's statutory liability.

16.2 Damage caused to third parties

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under the Project Agreement.

16.3 Hold harmless

The Recipient shall hold the KIC LE and its respective assigns and employees, officers and directors harmless from and against all losses, costs, liabilities, claims, damages and expenses, resulting from or relating to or arising out of the breach or default in the performance of any obligation on the Recipient's part under the Project Agreement including these T&C through a legal action, including any counterclaim, that has proceeded to final judgment by a court of competent jurisdiction, in either case to the extent it determined a breach or default by the Recipient in the performance of the Project Agreement, provided it is not caused by the KIC LE's wilful act or gross negligence. The Recipient will be entitled to make observations towards the KIC LE, regarding the Recipient's obligation to hold the KIC LE harmless and the KIC LE shall reasonably consider such observations by the Recipient. The KIC LE shall take into account the reasonable requests of the Recipient with regard to the defence and the settlement of such claims, including the selection of counsels, and it is understood that KIC LE shall not settle any claim without the consent of the Recipient if and to the extent affecting Recipient.

16.4 Force Majeure

No Party shall be considered to be in breach of the Project Agreement if it is prevented from fulfilling its obligations under the Project Agreement by Force Majeure.

Each Party shall notify the other Party of any Force Majeure without undue delay.

Article 17: Non-disclosure of information

17.1 Unless stipulated more strictly in the Project Agreement including the EIT RM Internal Agreement and/or GA2023-2025 EIT RM included therein by reference, all information in whatever form or mode of communication, which is disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party") in connection with the Project and the Project Agreement during its implementation and which has been explicitly marked as "confidential" at the time of disclosure, or when disclosed orally or visually has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within thirty (30) calendar days from oral or visual disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

17.2 The Receiving Party hereby undertakes in addition and without prejudice to any commitment of non-disclosure under the GA2023-2025 EIT RM and/or the Project Agreement, for a period of 5 years after the end of the Agreement:



- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by the Receiving Party shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Receiving Party including all copies thereof and to delete all information stored in a machine-readable form, to the extent practically possible. The Receiving Party may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations.

17.3 The Receiving Party shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

17.4 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Receiving Party can prove that:

- the Confidential Information becomes publicly available by means other than a breach of the Receiving Party's confidentiality obligations;
- the Disclosing Party subsequently informs the Receiving Party that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Receiving Party without any obligation of confidence by a third party who is to the best knowledge of the Receiving Party in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Project Agreement(s), the PA 2021/EIT/EIT RawMaterials PA and/or the GA2023-2025 EIT RM;
- the Confidential Information, at any time, was developed by the Receiving Party completely independently of any such disclosure by the Disclosing Party; or
- the Confidential Information was already known to the Receiving Party prior to disclosure; or
- the Receiving Party is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provisions of Article 17.7 hereunder.

17.5 The Receiving Party shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project Agreement as with its own confidential and/or proprietary information, but in no case less than reasonable care.

17.6 The Receiving Party shall promptly advise the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

17.7 If the Receiving Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure:

- notify the Disclosing Party; and
- comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.



Article 18: Annexes

The following annexes are attached to these T&C:

[none]

In case of conflict between the provisions of these T&C and their Annexes, the provisions of these T&C will prevail.

Article 19: Miscellaneous

19.1 Inconsistencies and severability

Should any provision of these TC or the Project Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of these TC and/or the Project Agreement. In such a case, the Parties shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

19.2 No representation, partnership or agency

No Party shall be entitled to act or to make legally binding declarations on behalf of the other Party. Nothing in these T&C or the Project Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

19.3 Notices and other communication

Any notice to be given under these T&C or the Project Agreement shall be in writing to the addresses and recipients as listed in the Project Agreement.

Formal notices:

If it is required in these T&C or the Project Agreement that a formal notice, consent or approval shall be given, such notice shall be signed by a Party's Authorised Representative(s) and shall either be served personally or sent by mail with recorded delivery or e-mail with receipt acknowledgement.

Other communication:

Other communication between the Parties may also be affected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the other Party.

19.4 Assignment and amendments

No rights or obligations of the Parties arising from these T&C or the Project Agreement may be assigned or transferred, in whole or in part, to any third party without the other Party's prior formal approval.



Amendments and modifications to the text of the Project Agreement require a separate written agreement to be signed by Authorized Representatives of both Parties.

19.5 Mandatory national law

Nothing in these T&C or the Project Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

19.6 Language

These T&C and the Project Agreement are drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

19.7 Applicable law

This Agreement shall be construed in accordance with and governed by the laws as stated in the Project Agreement.

19.8 Settlement of disputes

The Parties shall endeavour to settle their disputes amicably.

All disputes arising out of or in connection with the Project Agreement including these T&C, which cannot be solved amicably, shall be finally settled before the courts as stated in the Project Agreement.

19.9 Data Protection

The Parties shall ensure that any processing of personal data shall be performed in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), as may be amended from time to time.

The collected personal data shall be used solely for the implementation, follow-up, reporting and management of the Project Agreement and for dissemination of information and communication purposes by the KIC LE and its subsidiaries foreseen by the Project Agreement. Data subjects have the right to access, rectify or delete their personal data. Data subjects can also object to its processing.

As regards KIC LE, to exercise these rights, data subjects can contact KIC LE at the address published on its web site⁹.

Status: as at 19 April 2023

⁹ www.eitrawmaterials.eu