**Revenue Sharing Mechanism Agreement for**

**financial return of EIT Food projects**

DRAFT (Subject for changes)

This specific project agreement for financial return mechanism of EIT Food [Innovation, Education, Business Creation] projects, hereinafter the “Agreement” is effective from 1st January 2022 and is entered into by and between

EIT Food IVZW, having its registered office at Philipssite 5 bus 34, 3001 Leuven (Belgium), hereinafter referred to as the “KIC LE”;

And

\_\_\_\_\_\_\_\_\_\_\_\_having its registered office at \_\_\_\_\_\_\_\_\_\_\_ and company number (VAT), hereinafter referred to as” Exploiting Party”, acting on its own behalf and on behalf of the other EIT Food Partners (hereinafter collectively referred to as “EIT Food Partners”) in the KAVA “\_\_\_\_\_\_\_\_\_\_\_” ;

WHEREAS:

The KIC LE has entered into the Partnership Agreement (“PA”) with the European Institute of Innovation and Technology (“EIT”) with the effective date of 01/01/2021establishing a long-term cooperation ('framework partnership), and setting out its terms and conditions and the general terms and conditions and rights and obligations applicable to the specific grants that may be awarded by the EIT for specific actions under the framework partnership:

The KIC LE has entered into the Model Grant Agreement (“MGA”) with EIT;

The EIT has awarded a Specific Grant to the KIC EIT Food in accordance with and subject to the terms and conditions of the PA and MGA.

The EIT Food Partners have acceded to the MGA by their signature of the Accession Form, as provided for in Article 40 and Annex 3 to the MGA.

The EIT Food Partners have submitted a proposal for the KAVA “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” , which is approved and integrated in the Business Plan for the relevant year;

Each EIT Food Partner on its own behalf, has entered into the bilateral project agreement (PGA) for its participation in the KAVA (KIC Added Value Activities) under the Business Plan of the KIC EIT Food for the relevant year;

The EIT Food Partners acknowledge that they had the choice to execute the sustainability mechanism included in the proposal submitted for the KAVA as accepted in the Business Plan following review and acceptance of this mechanism by KIC LE, or to opt for the signature of the present Agreement.

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| Clarification of the introduction of the Financial Sustainability mechanism: The reason for introducing a Financial Sustainability mechanism is embedded in the MGA & EIT regulation. In addition, these regulations are being strictly introduced into the legal framework of Horizon Europe, stating that returns should be reinvested into the KIC to leverage other funds and ensure Financial Sustainability. The Financial Sustainability mechanism requirement was mentioned in 2022 Call for Proposals Guidelines. |

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

# Article 1: Definitions

1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules of Participation for Horizon Europe or in the PA or MGA including its Annexes, or the PGA.

1.2 Additional Definitions

**“Affiliated entities** shall have the meaning as defined in article 187 of the EU Financial Regulation 2018/1046:

(a) entities that form a sole beneficiary [(i.e. where an entity is formed of several entities that satisfy the criteria for being awarded a grant, including where the entity is specifically established for the purpose of implementing an action to be financed by a grant)];

(b) entities that satisfy the eligibility criteria and that do not fall within one of the situations referred to in Article 136(1) and 141(1) and that have a link with the beneficiary, in particular a legal or capital link, which is neither limited to the action nor established for the sole purpose of its implementation”.

**“Authorised Representative”** shall mean the person or persons duly authorised to sign this Agreement on behalf of a Party.

**‘’Consortium”** shall mean the EIT Food Partners (including the Exploiting Party as further defined) working together in the “KIC Added Value Activity” or “KAVA”.

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

“**Exploitation”** or “**Exploit** shall mean the direct or indirect use of Results of the KAVA in i) further research activities other than those covered by the Business Plan, or ii) in developing, creating or marketing a product, or process, or iii) in creating and providing a service. Exploitation or Exploit as defined in this Agreement does not include use of Results for academic or other non-commercial research activities or teaching.

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| Clarification of definition of “Exploitation: The definition of Exploitation is based on the definition of Exploitation as provided for in Article 16 MGA. In plain language Exploitation means the use of the Results for commercial purposes, of selling, marketing, licensing, distributing etc products and services. However, it is important to note that the activities of academic research activities and teaching are excluded from the definition for this Agreement. By doing this, EIT Food wants to exempt the academic activities from the scope of this Agreement and the sustainability mechanism. |

**“Exploiting Party”** shall mean the party as designated in the list of parties to this Agreement, that will take the primary responsibility for the Exploitation of the Results of the KAVA, in consultation with the other EIT Food Partners in the KAVA.

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| Clarification of the definition of “Exploiting Party”: The Exploiting Party is the EIT Food Partner that will take the primary responsibility for the commercial Exploitation of the Results of the KAVA. The EIT Food Partners working together in the KAVA should make arrangements between themselves in order to determine who will be the Exploiting Party towards KIC LE. Since EIT Food Partners are deemed to enter into a consortium agreement, the expectation is that these arrangements will be made at the level of the consortium agreement. When an Exploiting Party would leave the consortium, the overall arrangements regarding further execution of the KAVA when EIT Food Partners are leaving (see Art. 32 of the MGA) will apply. Typically, the tasks will be reallocated, appropriate amendments will have to be made. Also, this Agreement would have to be amended in the event of a change of parties involved. |

**“KIC Added Value Activity” or “KAVA”** shall mean the KIC Activity as defined in the PA, Article 2 partially or wholly funded by the EIT under the framework of the PA and the MGA, with reference” \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” carried out by the EIT Food Partner, or by it in co-operation with other entities.

**“Result(s)”** shall mean any tangible or intangible output of the KAVA, such as data, knowledge and information whatever their form or nature, whether or not they can be protected, which are generated in the KAVA.

**“Term-Sheet”** shall mean the attached document as Annex I to this Agreement, including the details of the financial conditions and Revenue Sharing mechanism agreed between EIT Food and the Consortium, for the exploitation of the results of the KAVA “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”

# GENERIC

# Article 2: Purpose & Exploitation Conditions.

2.1 EIT Food Partners acknowledge and agree that the KIC EIT Food is under the requirement to develop sustainability mechanisms, since financial sustainability is a key requirement from EIT for the KIC EIT Food.

Parties acknowledge the obligations of EIT Food Partners under Article 16 of the MGA to take measures aiming to ensure ‘exploitation’ of the results of the KAVA.

2.2 KIC LE acknowledges that the decision to Exploit and the best manner how to Exploit the Results of the KAVA vest with EIT Food Partners at their discretion. KIC LE expects EIT Food Partners to make the necessary arrangements between themselves in this regard, to be reflected in the Consortium Agreement for the KAVA or other agreements between EIT Food Partners.

2.3 In order to fulfil the sustainability requirements from EIT Food, EIT Food Partners agree that the Revenue Sharing Mechanism will be due in case of Exploitation of the Results of the KAVA and the obtention of revenues arising from said Exploitation.

2.4 The EIT Food Partners acknowledges and agree that the Exploitation of the Results of the KAVA shall start at term agreed for the exploitation and detailed in the Term- Sheet (the “Exploitation Period”) and at the latest 2 years after the KAVA ends and will last a maximum of six years after the end of the KAVA (hereinafter the “Maximum Exploitation Period”). In case the exploitation doesn’t achieve the amount/percentage included in the Term- Sheet the exploitation shall continue until said percentage is achieved, with the limit of six years after the start year.

The KIC LE shall perform regular evaluations on the progress of the exploitation during the exploitation Period and shall maintain ongoing discussions in good faith with the Exploiting Partners regarding the progress of the exploitation (hereinafter the “Exploitation Review’’)

2.5 EIT Food Partners in the KAVA will make their best efforts to exploit the Results during the Exploitation Period, and if at any moment during the Exploitation Period and after the Exploitation Review, the KIC LE in accordance with the EIT Food Partners consider that the exploitation Results has not or is expected not to generate any revenues, the EIT Food Partners shall grant to KIC LE additional Access Rights, as further described in PART II Article 9 of this Agreement.

Moreover, in such case, the payment of a lump sum and/or revenue sharing shall not be due by EIT Food Partners, and the KIC Partners shall commit to stop the exploitation of the Results and will sign a commitment letter with the confirmation of the cease of the exploitation that shall be submitted to KIC LE.

2.6 The KIC Partners shall be liable towards the KIC LE for the infringement of the commitment of cease of the exploitation and will indemnify KIC LE in an amount equal to the \_\_\_% of the revenues obtained by the KIC Partners for the exploitation of the Results, after the signature of the commitment of cease of exploitation. The liability of EIT Food Partners for said infringement shall in any case be limited to the amount equal to the\_\_% of the total EIT funding for the KAVA as agreed with EIT per the Amendment to the Grant Agreement in the relevant year.

# Article 3: Revenue Sharing Mechanism Amount – Payment & Invoicing- Verification

The KAVA will contribute to the Financial Sustainability of the KIC LE (EIT Food ivzw) in case of successful exploitation of the results by means of the agreed Revenue Sharing Mechanism as described and further detailed in the Term-Sheet. The revenue Sharing detailed in the Term- Sheet shall be deemed to cover the amount equal to \_\_% of the total EIT funding for the KAVA as agreed with EIT per the Amendment to the Grant Agreement in the relevant year. In case the exploitation doesn’t achieve the \_\_\_of the EIT funding, according to the schedule included in the Term- Sheet the exploitation shall continue until said percentage is achieved, with the limit of six years after the start year.

3.1. EIT Food Partners are aware that the payment of the amounts due to EIT Food according to the agreed conditions in the Term-Sheet should not be considered as a reimbursement of the grant. It has to be considered as a mechanism to contribute to the financial sustainability of the KIC EIT Food.

On behalf of the EIT Food Partners in the KAVA, the Exploiting Party shall be responsible for the payment of the total of due amounts according to the schedule included in the Term-Sheet.

EIT Food Partners shall make the corresponding arrangements between themselves in respect of the payment, to be reflected in the Consortium Agreement for the KAVA or in other agreements between EIT Food Partners. The Exploiting Party shall make sure that appropriate arrangements are made between the EIT Food Partners in the KAVA in order to be able to honour its obligations towards the KIC LE for the payment of amounts due to KIC LE for the implementation of the Term-Sheet.

3.2. KIC LE shall issue annually an invoice for the due amounts to the Exploiting Party after the reception by EIT Food of the report and the sworn declaration as stated in the Term-Sheet.

3.3 The Exploiting Party agrees that EIT Food or an independent auditor assigned by EIT Food shall have the right, at any moment during the term of this Agreement, to perform a verification of the related account(s) that underlies calculation base of the Revenue Sharing Mechanism in accordance with International Standard on Related Services (ISRS) 4400. The Exploiting Party shall grant access to its properties, premises and records for this purpose. The expenses of this verification shall be for the account of EIT Food. EIT Food shall communicate to the Exploiting Party of its intention if performing the verification 15 days prior to the date of the verification.

**Article 4: Payment**

4.1 All invoices must be paid in full within thirty (30) days from the date of invoice and all payments shall be made in EUR. The Exploiting Party shall pay the invoiced amount without any withholdings. KIC LE may sell its receivables under this Agreement to a third party without the Exploiting Party’s consent.

4.2 In the event of any delay in payments, the Exploiting Party agrees to pay interest on the amount delayed at the rate of the lesser of (a) (Euribor+ 5%) per annum for each day elapsed from the due date to the date of actual payment, calculated on the basis of a 360-day year or (b) the maximum interest rate allowed by applicable law. Any partial payments received will first be applied to cover accrued interest, if any, and thereafter be credited to cover the principal amount outstanding.

**Article 5: Term**

This Agreement shall have effect from the Effective Date identified at the beginning of this Agreement.

It shall continue to be in full force and effect until all obligations resulting from this Agreement are fulfilled.

Article 6: Applicable law

This Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.

# Article 7: Settlement of disputes

The Parties shall endeavour to settle their disputes amicably. All disputes arising out of or in connection with this Agreement, which cannot be solved amicably, shall be brought before the courts of Brussels.

**PART II**

**KIC LE ADDITIONAL ACCESS RIGHTS (ONLY APPLICABLE WHEN THE EIT FOOD PARTNERS IN THE KAVA HAVE NOT OBTAINED ANY REVENUES ARISING FROM THE EXPLOITATION AFTER THE EIT FOOD REVIEW ON THE PROGRESS OF EXPLOITATION)**

**Article 8: Additional Access Rights for KIC LE – Right to disseminate**

In the event that EIT Food Partners in the KAVA have not to obtained any revenues after the Exploitation review as detailed in article 2.4 of this agreement and the Parties agree to , each EIT Food Partner in the KAVA shall grant to the KIC LE the following additional Access Rights; exclusive or non-exclusive, fully paid-up, irrevocable, world-wide Access Rights to use the Results of the KAVA for the enhancement of the KIC EIT Food and the EIT Food Partners, for example for use in scientific papers, benchmarking. Such access rights shall include the right to grant sublicenses. In the case that access rights, including sublicensing rights, at no cost are not allowed under the Framework for State Aid for Research and Development and Innovation, a fair and reasonable compensation will be agreed in good faith with the EIT Food Partner(s) in the KAVA owning the Results .

Each EIT Food Partner in the KAVA agrees to negotiate in good faith Access Rights to its Background to KIC LE if such Access Rights are needed for the use by the KIC LE of the Results as described in this Article 8, upon adequate financial conditions to be agreed. Access Rights are needed if, without the grant of such Access Rights, the use of the Results would be technically or legally impossible.

Moreover, KIC LE shall have the right to widely disseminate such Results in the way it deems fit.

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| Clarification: The ownership and Access Rights regime of the EIT Food Partners as provided for under the MGA article 16 remain intact and are not affected by this Agreement. The EIT Food Partners will continue to own the Results of the KAVA they have generated. EIT Food does not request to transfer the ownership of the Results from the EIT Food Partners. The EIT Food Partners will also continue to have the non-exclusive Access Rights on the Results of the other EIT Food Partners. However in the event that or no revenues have been obtained from the exploitation or KIC LE in agreement with EIT Food Partners consider that is expected not to generate any revenues after the review on the progress of the exploitation, under this Agreement, KIC LE will be entitled to request from he receive additional rights, to use and to disseminate the Results, on top of the Access Rights already granted under the MGA by and between the EIT Food Partners. This means that the Results may be used in a broader and public way. This may obviously impact a commercialization strategy which would be based on a stricter and more limited scheme of Access Rights. |

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| Clarification regarding Background: the Agreement provides for a mechanism whereby KIC LE and EIT Food Partners should negotiate in good faith Access Rights to Background. There is no strict obligation to grant Access Rights to Background and in any case a compensation would be due by KIC LE for the Access Rights to the Background of the EIT Food Partners. |

# Signatures

The Parties have caused this Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

The signature of a Party by means of a scan or digitization of the original signature (e.g. a scan in PDF format) or an electronic signature (e.g. via AdobeSign), counts as an original signature with the same validity, enforceability and permissibility. Each Party receives a fully signed copy of the Agreement. The transfer of this copy by e-mail or via an electronic signature system will have the same legal force and legal effect as the transfer of the original copy of the Agreement.

KIC LE

[EIT FOOD PARTNER]

**ANNEX I Terms for Revenue Sharing Mechanism Agreement (RSMA)**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **KAVA #** | **Project Title** | | | | | | | **Activity Leader** | | | **EIT Food amended grant** | | | |
|  |  | | | | | | |  | | |  | | | |
| **Responsible Exploiting partner** | | | | **Contact Person** | | **Function** | | | **Contact data** | | | | | |
|  | | | |  | |  | | |  | | | | | |
| **Key Exploitable Results (KER)** | | | | | | | | | | | | | | |
| **#** | | **Title** | | | | | | | **IP owner – responsible** | | | | | |
|  | |  | | | | | | |  | | | | | |
|  | |  | | | | | | |  | | | | | |
| **Revenue Sharing Mechanism** | | | | | | | | | | | | | | |
| Type | | Example. Revenue sharing related to the exploitation of the KERs | | | | | | | | | | | | |
| Calculation base for the FRM | | Example. A % over the annual revenues from the sales of the KERs Revenue sharing with EIT Food occurs until a defined cap is realised. | | | | | | | | | | | | |
| Description of the Self Developed FRM | | KER # % Start year End year  1 X% 20.. 20..  2 X% 20.. 20.. | | | | | | | | | | | | |
| **Monitoring and payment schedule in case of Revenue Sharing** | | | | | | | | | | | | | | |
| **Projected revenues**  **(in €) KER #1** | | | **2022** | **2023** | **2024** | | **2025** | | **2026** | **2027** | | **2028** | **beyond** |  |
|  |  |  | |  | |  |  | |  |  |  |
| **Projected revenues**  **(in €) KER #2** | | | **2022** | **2023** | **2024** | | **2025** | | **2026** | **2027** | | **2028** | **beyond** |  |
|  |  |  | |  | |  |  | |  |  |  |
| **Projected financial Return KER #1 and #2 to EIT Food** | | | **2022** | **2023** | **2024** | | **2025** | | **2026** | **2027** | | **2028** | **beyond** |  |
|  |  |  | |  | |  |  | |  |  |  |
| **Explanation (if relevant and where required):**   * The projected revenues and Revenue Sharing to EIT Food are an estimation that serves EIT Food internal income projections, and by no means a legal obligation of the exploitation or KAVA project beneficiaries. * Based on the total projected revenues of KER #1 and KER #2 the cap on revenues sharing with EIT Food is expected to be realised in 20... The revenues sharing will continue after 20.. but no later than 2025 in case the cap on revenues sharing has not been realised in 2023 due to realised revenues being lower than projected revenues. | | | | | | | | | | | | | | |
| **Monitoring of calculation base for the RSM** | | | | | | | | | | | | | | |
| KER 1 and 2 | | * The exploitation partner will inform EIT Food about the annual revenues generated and a calculation of the EIT’s revenue share through a dedicated annual report using a template to be provided by EIT Food. * This report will quantify the exact annual revenues generated related to the exploitation of the Key Exploitable Result as defined in this TermSheet. The Exploiting Partner will provide EIT Food with a signed sworn declaration on the veracity of the annual KER report not later than Month XX of the subsequent calendar year. EIT Food will provide a template for this declaration. | | | | | | | | | | | | |
| **Payment schedule** | | | | | | | | | | | | | | |
| KER 1 and 2 | | Payment of the Revenue Sharing, calculated as the agreed percentage on the received revenues, as certified in the beneficiaries official accounts, will be paid to EIT Food on an annual basis, each year within at least 30 working days after the after the reception of the report, the sworn declaration and the invoice issued by the Exploiting Partner. | | | | | | | | | | | | |
| **Monitoring and payment schedule in other cases** | | | | | | | | | | | | | | |
| Not applicable | | | | | | | | | | | | | | |
| **Any additional special clauses** | | | | | | | | | | | | | | |
| Not applicable | | | | | | | | | | | | | | |
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