EIT Food IP Policy

PREAMBLE

KIC EIT Food is a large scale Institutionalized European Partnership, as referred to in Article 8 of the Horizon Europe Regulation, of higher education institutions, research organizations, companies and other stakeholders in the innovation process in the form of a strategic network, regardless of its precise legal form, based on joint mid-to long-term innovation planning to meet the EIT Food challenges and contribute to attaining to the objectives established under the Horizon Europe Regulation.

The mission of KIC EIT Food is to put Europe at the centre of a global revolution in how food is innovated, produced and valued by the society.

Intellectual Property (IP) will play a significant role in the implementation of EIT Food's Strategic Agenda. This IP Policy represents the common understanding of the EIT Food KIC Partners on how to deal with the Intellectual Property generated through the activities of EIT Food.

§ 1
DEFINITIONS

The following definitions are applicable for the purposes of this IP Policy. While many of these terms have already been defined in regulations and agreements applicable to EIT Food, they are repeated here in order to facilitate the implementation of this IP Policy. Definitions of additional terms are included to ensure a common understanding between all KIC partners of EIT Food. Hereinafter words beginning with a capital letter shall have the meaning defined herein. In case of conflicts between the terminology in this IP Policy and in any other legally binding agreement, such as the PA or the Horizon Europe Model Grant Agreement (MGA), the terminology of the legally binding agreement will prevail.

- **Access Rights** shall mean rights to use Results and/or Background under the terms and conditions laid down in accordance with the Annex 5 of the Horizon Europe MGA, the FSA and this IP Policy;
- **Association** or **KIC LE** shall mean the international non-profit association (internationale vereniging zonder winstoogmerk - association internationale sans but lucratif) under Belgian law "EIT Food";
- **Background** shall mean any data, know-how, or information whatever its form or nature, tangible or intangible, including any rights such as Intellectual Property rights, that is:
  (i) held by EIT Food KIC Partners or other participants prior to their accession to the KAVA or developed or acquired by participants independently from the work in the KAVA [even if in parallel with the performance of the KAVA] ;
  (ii) needed for carrying out the KAVA or for the Exploitation of the Results of the KAVA; and (iii) identified by the EIT Food Partners in a written agreement in accordance with the

Horizon Europe Grant Agreement and the FSA
If Background is subject to rights of a third party, the EIT Food KIC Partner concerned must ensure that it is able to comply with its obligations under the FSA.

- **Confidential Information** shall mean any data, materials, trade secrets or other information of a confidential nature in whatever form or mode of communication (including, without limitation: written, oral, visual, electronic, magnetic, digital form), which one EIT Food KIC Partner, receives from another EIT Food KIC Partner, ("Disclosing Party") or discloses to another EIT Food Partner or other participants of KAVA in connection with the purpose of EIT Food activities, previously not disclosed in any publication and identified by the Disclosing Party as "Confidential Information", "confidential", "secret" or similar (either verbally or in writing) before or at the time of the disclosure. In the case of oral disclosure, the confidential nature of the disclosed matter shall be confirmed and designated by the Disclosing Party in writing within 30 calendar days following the disclosure. Confidential Information includes also all copies, presentation, reproduction, summaries, analyses, extracts or other documents or records holding the Confidential Information.
- **Conflict of Interests** shall mean a situation where the impartial and objective implementation of the specific KAVA is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest;
- **Dissemination** shall mean the public disclosure of the Results by any appropriate means (other than resulting from protecting or exploiting the Results), including scientific publications in any medium;
- **EIT** shall mean the European Institute of Innovation and Technology;
- **Exploitation** shall mean direct or indirect use of the Results in further research and innovation activities other than those covered by the KAVA concerned, including inter alia, commercial exploitation such as developing, creating and marketing a product or process, or in creating and providing a service, or in standardization activities;
- **Fair and Reasonable Conditions** shall mean appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for Access Rights, for example the actual or potential value of the Results or Background to which Access Rights are requested and/or the scope, duration or other characteristics of the Exploitation envisaged;
- **"Financial Support Agreement" or "FSA"** shall mean the agreement laying down the contractual arrangements between the Association and the EIT Food Partner regarding their respective rights and obligations for the implementation by the EIT Food Partner of KAVAs, transposing to the extent needed the provisions of the Grant Agreement.
- **Partnership Agreement" or "PA"** shall mean the agreement laying down the general terms and conditions under which the KIC LE must operate as an Institutionalized European Partnership, entered into by and between the EIT and KIC LE, for a duration of 4 years, with an effective date of January 1, 2021;
- **IP and Legal Committee** shall mean the IP Board of the Association, established to advise on intellectual property rights related issues, in accordance with rules set out in the Articles of Association and By-laws of the Association and as provided for in Article 6.1 e) of the Partnership Agreement;
- **KAVA (KIC Added Value Activities)** shall mean activities carried out by KIC EIT Food in accordance with the KIC (Business Plan), contributing to the integration of the knowledge triangle, including the establishment, administrative and coordination activities of KIC EIT Food, and contributing to the overall objectives of the EIT
- **KIC EIT Food** shall mean the KIC in the field of food, as defined in the preamble;
- **EIT Food Member** shall mean a legal entity that has acceded to the KIC LE, as a Strategic Partner or a Delivery Partner, as referred to under Article 4 of the Statutes of the Association;
- **EIT Food Community Member** shall mean an entity as referred to under Article 5 of the Statutes

of the Association.

- **EIT Food Partner** shall mean either an EIT Food Member or an EIT Food Community Member.

- **"Entities with CLC role"** shall mean a co-location centre, which is a physical hub, established in an open and transparent manner, which promotes linkages and active collaboration among the knowledge triangle actors and acts as a focal point for knowledge exchange through which KIC partners can access facilities and the expertise needed to pursue their common objectives. Entities with CLC role are key actors in the KIC partnership.
- **Affiliated Entity** shall mean a legal entity as defined in article 187 of the EU Financial Regulation 2018/1046;
- **Results** shall mean any tangible or intangible output of a KAVA, such as data, know-how or information, which is generated in a KAVA, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including Intellectual Property rights;
- **Grant agreement** — Agreements signed by the EIT and the KIC LE laying down the provisions concerning the implementation of the KIC Business Plan through grants.
- **Sub-contractor** - shall mean a third party involved in the implementation of certain tasks;
- **Sub-grantee** - shall mean a legal entity participating in the KAVA and receiving financial support for such participation. For the avoidance of doubt, under the cascading funding model, EIT Food Partner shall act as subgrantees to the KIC LE.

§ 2
OBJECTIVES OF THE IP POLICY

The objectives of the IP Policy are to comply with the openness and transparency provisions of Article 7.2 e) of the PA, being that the KIC EIT Food must be transparent, by publishing on its website and providing the EIT with information and key documents in due time about i.a. the KIC IP Policy.
More in particular, the IP Policy includes the following:

- To clarify rules laid down in existing legal frameworks relevant for the KIC EIT Food in order to facilitate their implementation and effective enforcement;
- To enable effective conceptualization and implementation of KAVA and stimulate the Exploitation of Results;
- To promote collaboration among business enterprises, higher education institutes and research organizations;
- To promote equitable partnerships formed to implement KAVA and stimulate multi-stakeholder involvement in KAVA;
- To stimulate the competitiveness and innovativeness in Europe, render it sustainable and ready to face future challenges, and benefit citizens in Europe and worldwide.
- To take into account the specific requirements when dealing with RIS and SME.

§3
SCOPE OF APPLICATION OF THE IP POLICY

EIT Food Partners and other participants involved in a KAVA are free to shape their reciprocal contractual relations and agree on detailed modalities for ownership, Dissemination and

Exploitation, as well as Access Rights to Background and Results as long as these modalities remain compliant with the relevant European and national regulations, including the regulations laid down in the PA, the Grant Agreement and the FSA

The EIT Food IP management and governance is based on a three-level-approach enabling an appropriate balance between effective governance and flexibility:
1. The Horizon Europe Regulation and EIT regulatory IP rules as defined in the PA and the Grant Agreement, as transposed to the EIT Food Partner under the FSA;
2. This IP Policy, providing for an overview and application of the main provisions of the PA and the Grant Agreement, as transposed to the EIT Food Partner under the FSA that need to be respected by the EIT Food Partners, and the other participants in a KAVA.
This IP Policy aims to provide explanation and guidance, but does not introduce new elements versus the PA, the Grant Agreement and the FSA from legal perspective. Although this IP Policy is not legally binding from a formal point of view, EIT Food Partners are expected to take this IP Policy into account in their relationship with KIC EIT Food and with the other EIT Food Partners. The specific IPR obligations, such as agreements on Background and Access Rights for implementing the action and Exploiting Results are limited to the KAVAs. In addition, this IP Policy sets out rules regarding the right of joint owners to grant non-exclusive licences to third parties to exploit jointly-owned results.
3. Project Agreements , providing for specific or additional terms and conditions could be made by the EIT Food Partners for specific collaborations in a KAVA.

Model Project Agreements provided by KIC EIT Food for KAVA are available for use.

§ 4
BACKGROUND

1. Any background knowledge held by an EIT Food Partner that does not meet the definition of "Background" in § 1 above does not constitute Background.

2. Prior to starting a collaborative KAVA, each EIT Food Partner is responsible to identify and agree with other partners (in writing, usually as part of the Project Agreement) on any relevant Background for the KAVA. Prior to sharing such information, the EIT Food Partners carry the obligation themselves to communicate effectively to other partners, and if necessary, mark or list in documents, which information is confidential and any specific limitations and/or conditions for exploitation, such as the requirement to obtain a license from the EIT Food Partner and/or third parties for such purposes.

3. Rights of EIT Food Partners to the Background will be respected. EIT Food Partners remain the owners of Background and are only required to grant Access Rights to Background insofar as required by the P, the Grant Agreement and the FSA . As KAVAs are independent, the Access Rights agreed for one KAVA remain limited to EIT Food Partners participating in this KAVA and do not extend to the entire partnership of KIC EIT Food.

4. EIT Food Partners shall grant Access Rights to Background to other EIT Food Partners participating in the same KAVA for implementing their own tasks in such KAVA on a royalty-free basis. It means that when an EIT Food Partner brings particular Background into a KAVA, the other participants in the same KAVA shall be granted Access Rights to this Background, allowing them to use this Background if needed to perform their own tasks in the KAVA, and granted free of charge.

5. EIT Food Partners shall grant Access Rights to Background to other EIT Food Partners participating in the same KAVA for the Exploitation of the Results of the KAVA based on Fair and Reasonable Conditions.

6. Unless agreed otherwise, each EIT Food Partner shall request Access Rights to Background for Exploitation of their own Results in writing to the EIT Food Partner within a period of twelve months following the completion of the concerned KAVA. Waivers are not valid unless in writing. This is intended to ensure that the EIT Food Partner who brought in the Background is not bound by the obligation to grant Access Rights beyond a certain period, while at the same time the EIT Food Partner needing to access the Background has sufficient opportunity to prepare the Exploitation of his own Results.

§5
OWNERSHIP OF RESULTS

1. Results are owned by the EIT Food Partner that generates them.

2. If two or more EIT Food Partners generate the Results together, *i.e.* two or more EIT Food Partners contribute substantially to the Results and (i) their respective, individual contributions cannot be ascertained or (ii) it is not possible to separate such joint Results for the purpose of applying for, obtaining or maintaining the legal protection of Results, the Results will be jointly owned by these EIT Food Partners.

3. The joint owners shall establish a written agreement regarding the allocation and terms of exercise of that joint ownership. They can do this as part of a consortium agreement related to the KAVA or through a separate agreement, which only deals with the joint ownership of specific Results. The joint owners may agree not to continue with joint ownership but decide on an alternative regime, inter alia by transferring their ownership shares to a single joint owner with Access Rights for the other participants, once the Results have been generated.

4. The EIT Food Partners should be aware about the impact of having jointly owned intellectual property rights. Provisions regarding jointly owned intellectual property often lead to lengthy discussions between partners in collaborative projects.

There are essentially two models regarding jointly owned intellectual property rights.

Under the first model, the joint owners have the right to use and to license, without any right to sub-license, the jointly owned intellectual property rights without accounting to the other joint owner(s).

Under the second model, the joint owners have the right to use and to license, without any right to sub-license, the jointly owned intellectual property provided the other joint owners are given:

- at least 45 days advance notice and
- fair and reasonable compensation

EIT Food encourages the EIT Food Partners to discuss the topic in a constructive manner, taking into account the interests of all the EIT Food Partners involved and to find balanced solutions (for industrial partners and RTO's to be able to achieve effective exploitation and for academia to have a fair return for their contribution).

As alternative solution for dealing with the jointly owned intellectual property rights, EIT Food Partners may want to consider the allocation of the property rights in the results generated jointly in an alternating mode to each of the EIT Food Partners involved or to allocate ownership depending on the field of application. EIT Food Partners should also be aware that start-ups and ventures will often request to have sole ownership or full control through exclusive licensing of the critical intellectual property for the deployment of their activities.

1. Documentation and reporting established in the course of KAVA implementation may be used

to verify whether and to which extent an EIT Food Partner has contributed to generating the Results.
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§ 6
RIGHTS RELATED TO RESULTS

1. Unless agreed otherwise, requests for Access Rights to Results for purposes beyond the performance of the KAVA concerned shall be made in writing to the EIT Food Partner or the Sub-grantee owning them.

2. Access Rights to Results shall be limited to those EIT Food Partners who participated in the same KAVA. EIT Food Partners as a generality, shall not have a right to obtain Access Rights to Results.

3. For specific KAVA, KIC LE and EIT Food Partners may agree upon

- co-ownership of a specific set of Results or

- Access Rights to KIC LE to a specific set of Results

if this appropriate for the overall deployment of the KIC or as a contribution to the financial sustainability. EIT Food Partners will be informed in an early stage about the need for such specific additional rights to the KIC LE. The detailed arrangements, including the conditions for the Access Rights, will be laid down in a specific agreement.

4. Granting an exclusive license to Results is only allowed if the other EIT Food Partners participating in the same KAVA have waived their Access Rights to the Results which would make granting the exclusive license impossible.

§ 7
OBLIGATIONS RELATED TO RESULTS

1. The owner of the Results is obliged

- To report on the Results to the KIC LE as required ;
- To strive to ensure protection of the Results for an appropriate period after completion of the concerned KAVA;
- To ensure Exploitation of the Results, either e.g. through own activities or *via* transfer or licensing of Results to another third party;
- To engage in Dissemination of the Results or otherwise publish its own or collaborative Results (unless it goes against the owner's legitimate interests) in accordance with the rules set out in the Grant Agreement and the FSA;
- To ensure open access to peer-reviewed scientific publications related to the Results in accordance with the rules set out in the Grant Agreement.

2. EIT Food Partners participating in a KAVA shall agree in writing on the conditions of protection, ownership and Exploitation of Results of the KAVA, taking into account the specific objectives of the KAVA.

3. EIT Food Partners having received financial support must — up to four years after the end of the KAVA — use their best efforts to exploit their Results directly (or to have them exploited indirectly by another entity, in particular through transfer or licensing).

If despite best efforts no exploitation takes place within one year after the end of the KAVA, the EIT Food Partners must (unless otherwise agreed in writing with the granting authority) use the Horizon Results Platform to find interested parties to exploit the results.

4. Since the EIT Food Partners must adequately protect their Results, EIT Food Partners shall explore the possibilities of protecting the Results of a KAVA in which they participate, including by legal means such as patenting. The adopted legal means, territorial scope of protection and time horizon of the protection shall be
decided on a case-by-case basis by the involved EIT Food Partners, taking into account the specific objectives of the KAVA and plans for Exploitation of the Results.

§ 8
RESULTS GENERATED BY EMPLOYEES AND OTHER INDIVIDUALS

1. EIT Food Partners participating in a KAVA shall ensure in every case before beginning their work on the specific KAVA that they will obtain all the necessary rights to the Results generated by their employees and other individuals (such as students, interns or subcontractors) involved by them in the course of their work on the specific KAVA in order to fulfil their obligations vis-à-vis the other EIT Food Partners involved. KIC Partners need to make sure that there is a written agreement in place before the start of the KAVA.

2. Employees of an EIT Food Partner, who work on a KAVA that involves mobility or secondment to another organization, shall remain employees of the EIT Food Partner, unless explicitly agreed otherwise in writing. The employer, the host institution and the individual employee should formally agree the terms related to the ownership of Results generated during such mobility or secondment to avoid any confusion or dispute. Any such agreement should determine the conditions of ownership and Exploitation of the Results related to the KAVA.

3. Any third party engaged by an EIT Food Partner to undertake work in a KAVA shall be bound by the terms of a written contract, which shall determine the conditions of ownership and Exploitation of the Results related to the KAVA. EIT Food Partners shall ensure that ownership and Exploitation of the Results vests in the EIT Food Partner that engages the third party or that the third party otherwise confers all necessary rights to the EIT Food Partner in order to enable the EIT Food Partner to the fullest extent to fulfil its existing obligations *vis-a-vis* other participants of the KAVA.

4. In situations, where, the EIT Food Partner works with employees or students in a KAVA (and/or their host in the case of student mobilities), they shall ensure that those employees or students participating in the KAVA are legally obliged to assign the rights to the Results to the EIT Food Partner, or otherwise conferring all necessary rights to the EIT Food Partner in order to enable the EIT Food Partner to the fullest extent to fulfil its existing obligations vis-à-vis other participants of the KAVA.

5. Unless otherwise agreed by EIT Food Partners participating in a specific KAVA, EIT Food Partners, who intend to involve students in the execution of the KAVA, shall allow these students to submit their theses or dissertations, required for the pursuit of academic degrees, where the theses or dissertations include Results, generated by these students.

6. ***place holder for putting section on confidentiality and dissemination/publication in the context of theses***

§ 9
IP and Legal Committee

1. The IP and Legal Committee has a consultation role to the Management Board regarding legal and intellectual property related issues for the KIC EIT Food, whereas the operational responsibility shall at all times stay with the EIT Food Partners.

2. The IP and Legal Committee consists of:

- representatives of the EIT Food Partners, with one representative nominated by each of the Co-Location Centres of the EIT Food,
- one representative of the EIT Food Management Team, who may be assisted by the legal counsel.

2.1. The nominating constituencies shall ensure that the nominees possess relevant knowledge and professional experience in matters related to the Intellectual Property management.

2.2. The composition of the IP and Legal Committee shall strive to ensure gender balance and a balanced representation of industrial (large, small and Start-ups) and EIT Food Partners from academies.

2.3. The members of the IP and Legal Committee shall strive to remain free of any Conflict of Interest or any influences that would interfere with their exercise of independent judgement in the capacity of the IP and Legal Committee member.. Any Conflict of Interest involving a member of the IP and Legal Committee shall immediately be disclosed by the member to the other members of the IP and Legal Committee.

2.4. The IP and Legal Committee shall elect its Chairperson from among its members.

2.5. The IP and Legal Committee may invite external advisors to attend selected meetings or to otherwise assist the IP and Legal Committee in the performance of its tasks.

3. The IP and Legal Committee performs the following functions:

- Establishing and updating the IP Policy;
- Upon request of the Supervisory Board or Management Board, consulting on legal matters pertaining to the KIC LE and the KIC EIT Food;
- Monitoring, implementing and updating the IP policy;

3.1. Offering general consultation and guidance to EIT Food Partners regarding their rights and obligations in negotiating access to necessary background IP, knowledge and data in order to fulfil their tasks in the relevant KAVA;- Acting as a mediator to resolve disputes between Strategic Partners and/or Delivery Partners in projects regarding legal and IP conflicts upon the request of Management Board.The IP and Legal Committee may formulate further policies related to the Intellectual Property in KAVAs, which shall remain non-binding for EIT Food Partners and be adopted by the EIT Food Partners as good practices on a voluntary basis. These policies might *inter alia* include: promotion of open innovations through the involvement of citizens and start-ups, protection of trade secrets, use of specific types of agreements stipulating the Access Rights or ownership of Results, and pursuit of scientific publications and academic degrees.

4. The IP and Legal Committee shall meet at least once a year and more often if necessary.

4.1. Beside its annual meeting, the IP and Legal Committee may carry out its functions using remote communication including telephone or video conferences, and may use electronic means of decision making.

4.2. Members of the IP and Legal Committee who are exceptionally unable to attend its meeting may submit their votes by a written proxy given to another member of the IP and Legal Committee.

5. Members of the IP and Legal Committee shall treat all information related to the matters proceeded by the IP and Legal Committee as Confidential Information. This obligation is for a period of five (5) years after termination of their role as member of the IP and Legal Committee. The Members of IP and Legal Committee shall treat as Confidential all information related to the matters proceeded by IP and Legal Committee and take every reasonable precaution and use all reasonable efforts to prevent the unauthorized disclosure of the same.

The above obligations of the Members of IP and Legal Committee will not apply to any Confidential Information disclosed to the Members of IP and Legal Committee that: (A) was known to the Member of IP and Legal Committee prior to the effective date of disclosure ; (B) is or becomes generally available to the public through means other than an unauthorized disclosure by the Member of IP and Legal Committee ; (C) was or subsequently is disclosed to the Member of IP and Legal Committee by a Third Party having a bona fide right to disclose such Confidential Information without breaching any obligations ; (D) is developed independently by the Members of IP and Legal Committee without benefit of or recourse to any of the Confidential Information; or (E) is published. In addition, the Members of IP and Legal Committee may make disclosures of Confidential Information to the extent required to comply with applicable laws and regulations or a court or administrative order; provided, however, that the Party who is required to make such disclosure (1) provides the Disclosing Party with reasonable prior written notice, (2) takes all reasonable and lawful actions to obtain confidential treatment for such disclosure and (3) discloses the minimum amount and scope of the Confidential Information necessary to comply with the applicable law, regulation or order. Adherence to the following rules shall be confirmed in writing by each member of the IP and Legal Committee, and appropriate records shall be kept by the EIT Food Supervisory Board.

5.1. Members of the IP and Legal Committee shall use Confidential Information only for the performance of their duties as members of the IP and Legal Committee and not for any other purpose. Members of the IP and Legal Comittee shall hold all Confidential Information in strict confidence and may not copy, reproduce, disclose, distribute or otherwise make available any of it, whether deliberately or not, to any third person.

5.2. Members of the IP and Legal Committee as recipients of Confidential Information acknowledge that the unauthorized disclosure of the Confidential Information may result in substantial financial or business damage and that the disclosing member of the IP and Legal Committee shall be responsible for any breach of confidentiality. If an EIT Food Partner suffers damage due to the breach of confidentiality by a member of IP and Legal Committee, the EIT Food Partner will be entitled to the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, provided ,however, that the breach of confidentiality is the result of the willful intent, misconduct or omission on the part of the Member of IP and Legal Committee.

5.3. Members of the IP and Legal Committee shall destroy Confidential Information within 15 days after having received a request from the entitled party to destroy all copies of any material that contains the Confidential Information. Any such destruction of Confidential Information should be duly and properly carried out and confirmed in writing.

DISPUTE RESOLUTION

1. EIT Food Partners in a KAVA should agree on appropriate mechanisms for dispute resolution and include the relevant provisions in the agreement signed before the commencement of KAVA.

2. As a general rule, EIT Food Partners shall use reasonable efforts to resolve disputes amicably through discussions among themselves and provide for alternative dispute resolutions in their contracts.