



**Oggetto: Direzione Tecnica. Approvazione del Partner Grant Agreement per l'adesione di Arpa Emilia-Romagna all'Associazione Climate-Kic in qualità di Affiliate Partner.**

**PREMESSO:**

- che l'Associazione no-profit Climate-KIC (Knowledge & Innovation Community) collega partner globali e locali dei settori privati, pubblici e accademici, allo scopo di accrescere conoscenza sul tema del cambiamento climatico;
- che l'Associazione Climate-KIC realizza diversi programmi di attività, tra cui il Programma Pioneers-into-Practice che offre la possibilità a soggetti individuali di accrescere le proprie competenze in merito allo sviluppo di sistemi innovativi per l'utilizzo di energie rinnovabili;
- che tale Programma si svolge in sei regioni europee, tra cui l'Emilia-Romagna, con la partecipazione di giovani a progetti realizzati da altre realtà pubbliche e private sia attraverso un periodo di permanenza presso il soggetto individuato sia con la partecipazione a workshop intensivi e all'annuale Climate-KIC Innovation Festival;
- che con D.D.G. n. 56 del 18/07/2012 si è provveduto all'approvazione della partecipazione di Arpa Emilia-Romagna al suddetto programma con il coinvolgimento di alcuni collaboratori della Direzione Tecnica;
- che la suddetta partecipazione al Programma Pioneers into Practice si è realizzata attraverso la sottoscrizione di appositi accordi con ASTER S.cons.p.a., in qualità di membro (Affiliate Partner) dell'Associazione Climate-Kic, che ha svolto il ruolo di interlocutore con Arpa Emilia-Romagna;

**CONSIDERATO:**

- che a conclusione della partecipazione al Programma Pioneers into Practice di cui sopra si è valutato opportuno attivare una collaborazione continuativa con l'Associazione Climate-Kic in quanto offre molte opportunità di attività nel settore dell'energia e ambiente e della lotta al cambiamento climatico;
- che i principali ambiti di attività dell'Associazione sono i seguenti: valutazione del clima, energia ed ambiente, gestione risorse idriche, resilienza urbana ed temi di interazioni tra le varie tematiche ambientali;
- che si è ritenuto pertanto opportuno presentare all'Associazione Climate-Kic richiesta di adesione quale Affiliate Partner;
- che la richiesta di Arpa, presentata in data 19/10/2012, è stata accettata dal Climate-Kic Governing Board;

RITENUTO:

- che l'adesione all'Associazione Climate-Kic possa favorire l'acquisizione di nuove competenze da parte dei collaboratori di Arpa e aprire prospettive nella partecipazione dell'Agenzia a progetti internazionali;

VERIFICATO:

- che l'affiliazione di Arpa all'Associazione Climate-Kic non comporta oneri economici;

RITENUTO PERTANTO:

- di approvare lo schema di Partner Grant Agreement, allegato sub A) al presente atto quale parte integrante e sostanziale, che disciplina la partecipazione di Arpa Emilia-Romagna all'Associazione Climate-Kic in qualità di Affiliate Partner, dando atto che la struttura di riferimento per l'Agenzia per ogni attività connessa è la Direzione Tecnica;
- di delegare il Direttore Tecnico ad agire in qualità di legale rappresentante di Arpa Emilia-Romagna nell'ambito dell'Associazione Climate-Kic;
- che il Direttore Tecnico possa, verificata la tipologia di programmi cui partecipare e in intesa con la Direzione Generale, coinvolgere nella realizzazione delle attività altre strutture di Arpa, previo accordo con il Direttore del Nodo interessato;
- di individuare l'Ing. Paolo Cagnoli, Responsabile del CTR Energia e Valutazioni Ambientali Complesse, quale referente per Arpa Emilia-Romagna nei confronti dell'Associazione Climate-Kic;

SU PROPOSTA:

- del Direttore Tecnico ad interim Prof. Stefano Tibaldi, il quale ha espresso, ai sensi del Regolamento Arpa per il Decentramento amministrativo, il proprio parere favorevole in merito alla regolarità amministrativa del presente provvedimento;

RICHIAMATA:

- la D.D.G. n. 79/2012 avente ad oggetto "Direzione Generale. Proroga fino al 28/02/2013 dell'assunzione ad interim da parte del Direttore Generale dell'incarico di Direttore Tecnico di Arpa Emilia-Romagna";

DATO ATTO:

- del parere favorevole espresso dal Direttore Amministrativo Dott.ssa Massimiliana Razzaboni, reso ai sensi dell'art. 9, comma 5, della L.R. n. 44/95;
- che il responsabile del procedimento è l'Ing. Paolo Cagnoli, Responsabile del CTR Energia e Valutazioni Ambientali Complesse;

DELIBERA

1. di approvare lo schema di Partner Grant Agreement, allegato sub A) al presente atto quale parte integrante e sostanziale, che disciplina la partecipazione di Arpa Emilia-Romagna all'Associazione Climate-Kic in qualità di Affiliate Partner, dando atto che la struttura di riferimento per l'Agenzia per ogni attività connessa è la Direzione Tecnica;
2. di delegare il Direttore Tecnico ad agire in qualità di legale rappresentante di Arpa Emilia-Romagna nell'ambito dell'Associazione Climate-Kic;
3. di dare atto che il Direttore Tecnico potrà, verificata la tipologia di programmi cui partecipare e in intesa con la Direzione Generale, coinvolgere nella realizzazione delle attività altre strutture di Arpa, previo accordo con il Direttore del Nodo interessato;
4. di individuare l'Ing. Paolo Cagnoli, Responsabile del CTR Energia e Valutazioni Ambientali Complesse, quale referente per Arpa Emilia-Romagna nei confronti dell'Associazione Climate-Kic;
5. di dare atto che per l'affiliazione all'Associazione Climate-Kic Arpa non dovrà sostenere alcun onere.

PARERE FAVOREVOLE

IL DIRETTORE AMMINISTRATIVO

(F.to Dott.ssa Massimiliana Razzaboni)

IL DIRETTORE GENERALE

(F.to Prof. Stefano Tibaldi)



**Final PGA**  
**AS APPROVED BY**  
**ASSEMBLY**  
**28 September 2011**  
**Farrer**  
**& Co**  
**LLP**

15 April 2012

Revision to maintain  
compatibility with and  
reference to GA2012

**CLIMATE-KIC**  
**PARTNER GRANT AGREEMENT 2012**  
**dated 1/10/2013**  
**between**  
**ASSOCIATION CLIMATE KIC**  
**and**  
**Agenzia Regionale Prevenzione e Ambiente dell'**  
**Emilia-Romagna**

## **PARTIES**

(1) **ASSOCIATION CLIMATE KIC**, an Association duly incorporated under the Laws of the Netherlands, with registered office located at Heidelberglaan 2, 3584 CS Utrecht, registered in Utrecht under the number 52000117, hereinafter referred to as “KIC-LE”;

and

(2) [Full Legal Name of KIC Partner]:	Agenzia Regionale Prevenzione e Ambiente dell' Emilia-Romagna
[Legal status]:	Not-for-profit public body
[Address of registered office]:	Via Po, 5  Bologna 40139

hereinafter referred to as “the KIC Partner”;

the KIC-LE and the KIC Partner hereinafter also referred to as “Parties” or, individually, as Party.

## **RECITALS**

- I The EIT has selected and designated KIC-LE as a Knowledge and Innovation Community (a “KIC”) for the purposes of the EIT Regulation and has offered to co-finance the KIC upon the terms of a Framework Partnership Agreement (“FPA”) and successive Grant Agreements (each a “GA”). The FPA remains in force for a period of seven years and a new GA will apply to the EIT Grant awarded for each successive Grant Period.
- II EIT will provide funds to KIC-LE for distribution to KIC Partners to fund activities that stimulate innovation, so-called “KIC added value activities” (as defined below).
- III The KIC Partner is a member of the KIC-LE and has signed an Internal Agreement with KIC-LE setting out the core terms which shall apply to any EIT funding made available to the KIC-Partner by KIC-LE (“the Internal Agreement”).
- IV The activities of the KIC are conducted in accordance with successive Business Plans and Budgets submitted to the EIT and annexed to the applicable GA. The GA, Business Plan and Budget for the 2012 Grant Period (“the Relevant Grant Period”) have now been approved by the Assembly and executed by KIC-LE and EIT, and are therefore binding on KIC-LE.

- V The KIC Partner has agreed to adhere to the mission of EIT and KIC-LE and intends to contribute to certain KIC activities in the form of “Activities” and/or longer term “Projects” (as are both defined below), as may be described or referred to in the Business Plan agreed between KIC-LE and EIT. For the avoidance of doubt, Activities are discrete, defined activities normally to be completed during a single Grant Period whereas Projects are longer term collaborations between KIC Contributors and KIC-LE, normally spanning more than one Grant Period.
- VI Under the Internal Agreement, payment of any EIT Grant Funding is conditional upon (i) KIC-LE and the KIC Partner agreeing and executing a Partner Grant Agreement for the Relevant Grant Period and (ii) the KIC Partner complying with the terms of the Partner Grant Agreement. This Agreement is the Partner Grant Agreement between KIC-LE and the KIC Partner for the Relevant Grant Period.
- VII This Agreement is subject to the EIT Regulation, and the Commission Decision Ref. C(2009)2661 of 3 April 2009 granting consent to the derogations requested by the European institute of innovation and technology from Regulation (EC, Euratom) No 2343/2002 on framework Financial regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002.

## IT IS HEREBY AGREED AS FOLLOWS:

### 1. Definitions

#### 1.1

In this Agreement (including the Recitals) the following terms shall have the meanings set opposite them unless the context requires otherwise

- Activity** means a defined KIC activity to be delivered during the Relevant Grant Period by one or more KIC Contributors under the Business Plan, as may be further described in an Activity Description. The Activities to which the KIC Partner has agreed to contribute (if any) are summarised in **Appendix 1** and as further described in the Activity Description(s) attached at **Appendix 2**;
- Activity Description** Shall mean the plan for each Activity, outlining the Tasks allocated to each KIC Contributor, the related maximum amount of the EIT Grant Funding budgeted per Task, the details and value of the Co-Funded Elements, any milestones, decision points, Deliverables, KPIs (if any) for that Activity, the identity of the Activity Lead and other data relevant to such Activity. The Activity Descriptions(s) applicable to the KIC Partner are set out in **Appendix 2**;
- Activity Lead** means, for each Activity, the individual nominated by the KIC Contributors, and validated by KIC-LE, to coordinate such Activity. The Activity Lead must be the employee or representative of a KIC Partner;
- Agreement** this agreement (including the Recitals), Appendices and the documents expressly referred to in them;

<b>Assembly</b>	is as defined in the KIC Articles of Association;
<b>Background Intellectual Property</b>	means Intellectual Property owned or controlled by the KIC Partner prior to the commencement of the Tasks, or which becomes owned or controlled by the KIC Partner other than as a result of the KIC Partner's performance of the Tasks (as applicable);
<b>Budget</b>	the budget applicable to the Relevant Grant Period and annexed to the GA;
<b>Business Plan</b>	the business plan applicable to the Relevant Grant Period and annexed to the GA;
<b>Co-Funded Elements</b>	means (in general terms) the parts of an Activity or Project (as applicable) which are not funded by the EIT Grant; the total estimated value of specific Co-Funded Elements attributed to the KIC Partner (if any) are as summarised in Appendix 1;
<b>Consortium Agreement</b>	in relation to Activities or Projects which involves more than one KIC Contributor working in collaboration, the agreement between the relevant KIC Contributors and (where KIC-LE is participating in the relevant Activity or Project) KIC-LE governing their respective contributions to the Activity or Project, as may be agreed and amended from time to time. A template Consortium Agreement shall be provided in due course by KIC-LE, to assist KIC Partners in this regard;
<b>Co-Location Centre or CLC</b>	has the meaning given to it in the KIC Articles of Association;
<b>CLC Tasks</b>	means Tasks specifically relating to the operation or administration of a CLC. The CLC Tasks to be performed by the KIC Partner (if any) are set out in <b>Appendix 2A</b> ;
<b>Contributed Background Intellectual Property</b>	means Background Intellectual Property which is used by the KIC Partner and/or made available for use by other KIC Contributors, in the course of the performance of an Activity or Project (as applicable);
<b>Deliverables</b>	The output of the Tasks, including (without limitation) any works of authorship, documents, reports, data, databases, inventions, products, software, technical and commercial information, photographs, designs, illustrations, artwork, diagrams, sound recordings, film recordings and any other subject matter or materials, in whatever form or medium (including digital equivalents);
<b>Effective Date</b>	the date on which this Agreement is executed by the Parties or (if earlier) the date on which the Relevant Grant Period began;
<b>EIT</b>	the European Institute for Innovation and Technology, established in

	accordance with the EIT Regulation;
<b>EIT Contracts</b>	means the FPA and the GA, as well as all amendments and/or changes thereto from time to time;
<b>EIT Grant</b>	the grant payable under the GA covering the Relevant Grant Period;
<b>EIT Grant Funding</b>	grant funding made available by EIT to KIC-LE under the EIT Grant;
<b>EIT Regulation</b>	Regulation (EC) No 294/2008 of the European Parliament and of the Council of 11 March 2008;
<b>Foreground Intellectual Property</b>	Intellectual Property generated by or on behalf of the KIC Partner in the course of performing the Tasks;
<b>FPA</b>	has the meaning given in Recital I;
<b>Governing Board</b>	means the Governing Board of KIC-LE, established in accordance with the KIC Articles of Association;
<b>GA or Grant Agreement</b>	the agreement between the EIT and KIC-LE covering the terms on which the EIT Grant is made available;
<b>Grant Period</b>	the period specified during a GA (in principle a calendar year, but which may under a GA be a longer or shorter period), being the period covered by the applicable EIT Grant
<b>Intellectual Property</b>	means patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, confidential information, applications for any of the above, Know How, and any similar right recognised from time to time in any jurisdiction;
<b>Internal Agreement</b>	has the meaning given in Recital III;
<b>IP Policy</b>	the policy regarding Intellectual Property to be adopted by the KIC-LE in accordance with the EIT's IPR Guidelines 2009/04/02, as updated by KIC-LE's IP Board and ratified by KIC-LE from time to time in accordance with the KIC Articles of Association
<b>KIC added value activities</b>	means activities defined as such in Article 6.2 of the FPA, namely activities carried out by KIC-LE or KIC Partners, or by them in co-operation with other entities that, within the priority area of climate change mitigation and adaption, stimulate innovation. These activities include education, research and innovation and entrepreneurial programmes as well as programmes and projects contributing to the integration of the knowledge triangle within the KIC. The latter programmes and projects include, in particular, supporting and delivering the appropriate leadership, governance, Co-Location Centres, mobility, intellectual property rights,

coordination, administration and engagement by the KIC with other actors in Europe and beyond; the KIC added value activities are a subset of the KIC activities;

<b>KIC activities</b>	means the activities defined as such under Article 4.1 of the FPA, namely activities in the priority area of climate change mitigation and adaption, in particular: <ul style="list-style-type: none"><li>• innovation activities and investments with European added value, fully integrating the higher education and research dimensions to attain a critical mass and stimulating the dissemination and exploitation of results; and</li><li>• cutting edge and innovation driven research in areas of key economic and societal interest and drawing on the results of European and national research with the potential to strengthen Europe's competitiveness at international level;</li></ul>
<b>KIC Articles of Association</b>	the governing statutes of the KIC-LE (in force from time to time);
<b>KIC By-Laws</b>	the KIC By-Laws adopted by the KIC-LE (in force from time to time);
<b>KIC Contributor</b>	means any KIC Partner or KIC Supporter that takes part in an Activity or Project;
<b>KIC Pillar</b>	one of the 4 value propositions of the KIC namely the Education, Entrepreneurship, Innovation and Pathfinder Pillars;
<b>KIC Supporter</b>	means an entity that contributes to the KIC, CLC or RIC, but is not a KIC Partner, and is labelled as such by KIC-LE in accordance with the KIC By-laws;
<b>Know How</b>	unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
<b>Lead Institution</b>	means, in respect of each Activity or Project, the KIC Partner who employs or engages the Activity Lead or Project Lead (as applicable);
<b>mutatis mutandis</b>	where in this Agreement is stipulated that clauses of the FPA or GA apply "mutatis mutandis" between KIC-LE and the KIC Partner, this means that where the FPA and GA provide rights and obligations of EIT and KIC-LE, it is intended that such rights and obligations shall have effect between KIC-LE and KIC Partner respectively, to the fullest extent reasonably possible;
<b>Pillar</b>	in respect of each KIC Pillar, the committee established by KIC-LE to

<b>Committee</b>	provide guidance, ensure quality assurance and assist with implementation of KIC activities in such KIC Pillar, normally including a representative from each relevant Co- Location Centre and RIC;
<b>Project</b>	KIC activities which take the form of an agreed project, normally spanning more than one Grant Period and involving more than one KIC Partner. The Projects to which the KIC Partner is a party (if any) are referred to in Appendix 1 and summarised in the Project Descriptions in Appendix 2;
<b>Project Description</b>	the summary of each Project summarising the Project itself, the KIC Partner's Tasks relating thereto and the details of any anticipated pre-financing payments for the Relevant Grant Period. The Project Description(s) applicable to the KIC Partner (if any) are set out in Appendix 2;
<b>Project Lead</b>	means, for each Project, the individual nominated by KIC Contributors, and validated by KIC-LE, to coordinate and oversee such Project. The Project Lead must be the employee or representative of a KIC Partner;
<b>Relevant Grant Period</b>	has the meaning given to it in Recital IV;
<b>RIC</b>	the thematically linked grouping of KIC Partners and KIC Supporters, also known as RegionalInnovation and Implementation Community;
<b>Tasks</b>	the tasks assigned to the KIC Partner during a given Grant Period in relation to each Activity and/or Project in which the KIC Partner is involved, as set out in the relevant Activity Description(s) and/or Project Description(s), respectively. Where the KIC Partner is a Co-Location Centre, its Tasks shall also include the CLC Tasks set out in Appendix 2A

- 1.2 References to any statute, enactment, order, regulation or other similar instrument shall be construed to include any subsequent re enactment, modification or statutory extension thereof.
- 1.3 Except where the context requires otherwise the singular includes the plural and vice versa; a reference to one gender includes all genders; words denoting persons include firms and corporations and vice versa.
- 1.4 Headings are included in this Agreement for ease of reference only and shall not affect interpretation or construction.
- 1.5 References to Clauses and Annexes are, unless otherwise provided, references to clauses and annexes of this Agreement.

## **2. Purpose and Duration**

- 2.1 The purpose of this Agreement is to set out the conditions subject to which, in respect of each Activity and/or Project and/or CLC Tasks (as applicable) in which the KIC Partner is involved during the Relevant Grant Period, the KIC Partner is entitled to receive EIT Grant Funding, as determined in accordance with Clause 7.
- 2.2 Once executed, this Agreement shall come into force on the Effective Date and shall remain in force until the Parties' obligations in respect of the Relevant Grant Period (including, without limitation any reporting obligations) have been fulfilled, unless and until terminated in accordance with the provisions of Clause 11.

## **3. The Tasks**

- 3.1 The KIC Partner undertakes to use reasonable efforts to perform the Tasks, but KIC-LE shall have no right under this Agreement to compel the KIC Partner to perform the Tasks.
- 3.2 If the KIC Partner fulfils the Tasks allocated to it, it is entitled to receive the EIT Grant Funding allocated in respect of such Tasks, subject to Clause 7.
- 3.3 The KIC Partner shall, in relation to the Tasks it is due to undertake:
  - 3.3.1 (for Activities and Projects) where the KIC Partner is not the Lead Institution (as applicable), work in cooperation with and comply with the reasonable instructions of the Activity Lead or Project Lead (as applicable);
  - 3.3.2 (for Activities and Projects) work in cooperation with the other KIC Contributors to the relevant Activity or Project (as applicable);
  - 3.3.3 do so with such care, skill and diligence as is reasonable;
  - 3.3.4 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Tasks can be fulfilled;
  - 3.3.5 (for Activities and Projects) ensure that the Tasks and any outputs of the Tasks (including Deliverables) conform with any description and/or specification set out in the relevant Activity Description or Project Description (as applicable)
  - 3.3.6 ensure that the Tasks performed by it conform with any regulations regarding the activities, management and administration of the KIC, including reporting requirements, as may be adopted by the KIC-LE under the provisions of the KIC By-Laws; and
  - 3.3.7 comply with all terms of the KIC By-Laws which relate to the provision of the Tasks (as applicable).
- 3.4 No variation to the Tasks allocated to a KIC Partner during the Relevant Grant Period is permitted without the written agreement of a duly authorised representative of KIC-LE. In the case of Activities and Projects, any requests for variation should in the first instance be directed to the Activity Lead or Project Lead (as applicable). Subject to the foregoing, new Tasks (including under a new Activity or Project) and amendments to existing Tasks may be agreed during the course of the Relevant Grant Period (or, where

both parties agree, during a reasonable period following the end of the Relevant Grant Period)). Where new Tasks, or amendments to existing Tasks, are agreed, the relevant Appendices of this Agreement (and, if applicable, the relevant Consortium Agreement) shall be added or updated accordingly.

#### **4. Access to Know How and Intellectual Property**

- 4.1 Ownership. As between KIC-LE and KIC Partner, both Background Intellectual Property and Foreground Intellectual Property shall remain the property of the KIC Partner introducing or creating such Intellectual Property (or its licensors, as the case may be), unless otherwise agreed in writing between the Parties.
- 4.2 Licensing for purposes of Activity/Project. Where, and to the extent, that an Activity or Project relies on or involves the use of the KIC Partner's Contributed Background Intellectual Property and/or Foreground Intellectual Property (all "KIC Partner Contributed IP"), this shall be noted (where practicable) in the relevant Activity Description (and the relevant Consortium Agreement (where applicable)) and KIC Partner shall grant to the other KIC Contributors (and KIC-LE, where KIC-LE is involved in the relevant Activity or Project), a non-exclusive, non-transferrable, royalty-free licence to use such KIC Partner Contributed IP to the extent required to allow the carrying out of the Activity or Project (as applicable). For the avoidance of doubt, this obligation shall not extend to requiring the KIC Partner to licence any KIC Partner Contributed IP for the purpose of commercial exploitation of such Intellectual Property by another KIC Contributor or KIC-LE.
- 4.3 Licensing for other purposes. Where KIC-LE or any other KIC Partner ("a Requesting Party") requests from KIC Partner a licence to use KIC Partner Contributed IP outside the scope of the licence referred to at Clause 4.2 above, to enable the Requesting Party to exploit its own Foreground Intellectual Property, such KIC Partner Contributed IP shall (to the extent that the KIC Partner is able to grant the relevant rights) be available to the Requesting Party on fair and reasonable and non-discriminatory terms, to be agreed in good faith in writing between the KIC Partner and the Requesting Party.
- 4.4 IP Policy. KIC Partner acknowledges that KIC-LE is, at the date of this Agreement, in the process of establishing an IP Board who will be tasked with finalising the IP Policy for the KIC setting out the general principles of recording, sharing and commercialising IPR generated in the course of KIC Activities and Projects. This IP Policy will be formulated with reference to the EIT IPR Guidelines<sup>1</sup>. KIC Partner agrees that, once such policy has been ratified and published by KIC-LE in accordance with the KIC Articles of Association, KIC Partner shall, in all matters relating to the KIC, acknowledge the IP Policy. In addition, KIC Partner will abide by the following specific terms:  
*1 [http://eit.europa.eu/fileadmin/Content/Downloads/PDF/kics/IPR\\_Guidelines\\_2009\\_04\\_02.pdf](http://eit.europa.eu/fileadmin/Content/Downloads/PDF/kics/IPR_Guidelines_2009_04_02.pdf)*
- 4.4.1 KIC Partner shall secure from all students, employees, researchers such rights as are required to enable KIC Partner to grant the rights under 4.2 and 4.3 above;
- 4.4.2 KIC Partner shall notify KIC-LE promptly when Foreground Intellectual Property of commercial value is created, ensure that such Intellectual Property is properly protected and shall use its reasonable efforts to exploit and disseminate the benefit of such Intellectual Property;
- 4.4.3 KIC Partner shall keep KIC-LE updated in relation to the nature of any proposed exploitation of such Intellectual Property, including (to the extent the KIC Partner is able given any confidentiality or contractual restrictions) the identity of any third party partners and proposed sharing of royalties or other commercialisation

revenues; and

- 4.4.4 where the KIC Partner intends to abandon the protection and/or commercialisation of any such Intellectual Property, KIC Partner shall notify KIC-LE with adequate time to enable KIC-LE to assess the value of such Intellectual Property and to respond.
- 4.5 Revenues arising from commercialisation of Foreground Intellectual Property. The IP Policy is likely to include a recommendation that a reasonable proportion of revenues shall be returned by KIC Partners to KIC-LE (or a subsidiary or affiliate thereof, as may be established in due course to assist with the commercialisation of Intellectual Property, and/or to receive a share of commercialisation revenues on KIC-LE's behalf) for reinvestment and sustainability. KIC-LE has agreed not to impose any such requirement in respect of the 2012 Grant Period, but this decision is without prejudice to KIC-LE's rights to introduce such a requirement (under future Partner Grant Agreements, or otherwise) during future Grant Periods, where such a requirement is agreed within the KIC, in accordance with the KIC Articles of Association. KIC-LE agrees, however, that any future revenue sharing arrangements will not apply in respect of any Projects commenced during the 2010, 2011 or 2012 Grant Periods, unless (in the case of each such Project) all KIC Partners involved in the relevant KIC Project so agree in writing.
- 4.6 Reservation of rights in other Background Intellectual Property. Nothing in this Agreement shall have the effect of requiring the KIC Partner to license any Background Intellectual Property, other than licences to Contributed Background Intellectual Property granted under the terms of this Agreement.
- 5. The EIT, EIT Contracts and Internal Agreement, and priority**

The KIC Partner agrees and accepts that the KIC-LE is responsible for dealing with the EIT on behalf of the KIC as a whole and accordingly:

  - 5.1.1 the KIC-LE shall receive each EIT Grant in its entirety from the EIT;
  - 5.1.2 the KIC Partner will not initiate any discussions with the EIT unless the KIC-LE has given its approval; and
  - 5.1.3 the KIC Partner has no authority to bind the KIC or the KIC-LE in any dealings with the EIT or third parties.
- 5.2 The KIC Partner shall be deemed a KIC Partner for the purposes of the EIT Contracts and shall perform all of its obligations under this Agreement in a manner consistent with the EIT Contracts so as to not cause a breach of the EIT Contracts.
- 5.3 KIC-LE undertakes to perform all obligations imposed on it under the EIT Contracts in accordance with the terms and conditions of those agreements and this Agreement, including performance of the Tasks attributed to it.
- 5.4 In the event of any conflict or inconsistency between the terms of this Agreement and either (a) the Internal Agreement or (b) the EIT Contracts, the following order of priority shall apply (to the extent of any conflict or inconsistency):
  - 5.4.1 the EIT Contracts shall take precedence over the Internal Agreement and this Agreement, with the FPA taking precedence over the GA; and

5.4.2 the Internal Agreement shall take precedence over this Agreement.

5.5 In the event of any conflict or inconsistency between the terms and conditions of this Agreement and either (i) the Appendices hereto (including Activity Descriptions and Project Descriptions) or (ii) a Consortium Agreement, the terms and conditions of this Agreement shall take priority (to the extent of such conflict or inconsistency).

## **6. Reporting, Evaluation and Auditing**

- 6.1 Progress reports (Activities). KIC Partner shall, in relation to each Activity, report to KIC-LE at the end of the Relevant Grant Period on the progress of its Tasks. Such progress reporting shall be in accordance with the operational procedures referred to, or imposed in accordance with, Appendix 3 Part A. KIC-LE shall also have the right to request interim progress reports during a Grant Period in respect of an Activity and KIC Partner shall comply with any such request.
- 6.2 Progress reports (Projects). In respect of Projects, KIC Partner shall report regularly to KIC-LE on the progress of its Tasks and Deliverables, as may be required by KIC-LE, so as to enable KIC-LE to monitor the Project and (if required) report to EIT. Such progress reporting shall be in accordance with the operational procedures referred to, or imposed in accordance with, **Appendix 3 Part B**.
- 6.3 Formal performance and cost reporting. Formal reporting on the performance of Activities and Projects, and each request from the KIC Partner for payment of each element of the EIT Grant Funding, in part or in whole, including the related cost reporting, shall be done in accordance with **Appendix 4**.
- 6.4 Audit rights. Where EIT has a right to audit reported costs under the FPA or GA, then such rights shall apply and KIC Partner shall, in addition, cooperate with KIC-LE in full in respect of any such audit requests.
- 6.5 Provision of information to EIT. KIC-LE shall deliver without undue delay to EIT any document (such as, but not limited to, progress reports related to Activities and/or Project) provided by the KIC Partner at the request of EIT.
- 6.6 EIT Recommendations. KIC-LE shall promptly inform the KIC Partner of any relevant recommendation, comment or request of EIT relating to the Tasks of the KIC Partner, which is likely to impact upon the level of EIT Grant Funding paid to the KIC Partner during the Relevant Grant Period.
- ## **7. Payment of EIT Grant Funding by KIC-LE**
- 7.1 Eligibility. The KIC Partner recognises and accepts that any EIT Grant Funding made available to it by KIC-LE may only be:
- 7.1.1 expended on the Tasks for which such EIT Grant Funding is made available; and
- 7.1.2 applied in paying costs that meet the eligibility criteria set out in the applicable GA.
- 7.2 Anticipated amounts of EIT Grant Funding payable to KIC Partner. The anticipated amounts of EIT Grant Funding budgeted in respect of the Tasks due to be performed by

the KIC Partner during the Relevant Grant Period are mentioned in **Appendix 1** and set out in more detail in the relevant Activity Descriptions and Project Descriptions attached at **Appendix 2**, or, in the case of CLC Tasks, **Appendix 2A**. Each amount is a maximum amount and the final amount of EIT Grant Funding to be paid to the KIC Partner, in respect of the Tasks performed by the KIC Partner, shall be determined by KIC-LE in accordance with the terms of this Clause 7, following its review of the performance and cost reports submitted by the KIC Partner in accordance with Clause 6.

- 7.3 Determination of amounts of EIT Grant Funding payable to KIC Partner. Subject to the proper performance of the Tasks, and the other terms and conditions of this Agreement, the KIC Partner is entitled to such part of the budgeted EIT Grant Funding as will finally be established by KIC-LE in accordance with the Performance and Cost reporting and review procedure set out in **Appendix 4**. For the avoidance of doubt any such payment shall be less any deductions or claw-back made by the EIT under the EIT Contracts.
- 7.4 EIT Requirements. The value and eligibility of the Co-Funded Elements shall be established by KIC-LE in accordance with the requirements of the EIT Contracts. KIC Partner is aware that the only costs eligible for funding under the EIT Grant are those as described in Article 7.1 – 7.3 of the GA.
- 7.5 Cash Flow. The anticipated timetable for payments to be made to KIC Partner during the Relevant Grant Period is set out in the relevant Activity Description or Project Description (as set out in **Appendix 2**). The timetable for payments made in respect of any CLC Tasks (if applicable) is set out in **Appendix 2A**. Any payments are (in addition to the requirements set out above) subject to the relevant instalment of the EIT Grant having been received by KIC-LE and no suspension being in force pursuant to the GA. The anticipated details of any pre-financing arrangements relating to the KIC Partner's Tasks (if any) are set out in the relevant Appendices (as shown above).
- 7.6 Rights of recovery. Where EIT has a right of recovery under the FPA or GA, and provided the right of recovery is based on improper performance of the Tasks, such rights shall apply mutatis mutandis between KIC-LE and KIC Partner.
- 7.7 Payment details. Payment by KIC-LE to KIC Partner hereunder shall be made in Euro to the bank account referred to in **Appendix 1**, or any other bank account details as may be provided by KIC Partner to KIC-LE after the execution of this Agreement, which new details shall only be effective five working days after receipt by KIC-LE of written notice from KIC Partner in that respect.

## **8. Pre-financing**

- 8.1 Where pre-financing is to be made available to the KIC-Partner as shown in Appendices 2 or 2A (as applicable), then, subject to the receipt by KIC-LE of the pre-financing payment of the EIT Grant in accordance with Article 10.1.1 of the GA, KIC-LE will transfer the relevant part of the pre-payment to KIC Partner as a percentage of the total EIT Grant Funding to be paid to the KIC Partner in respect of the relevant Activity or Project (if applicable) and according to the priorities agreed by the Governing Board.
- 8.2 Where pre-financing has been made available, the balance of the EIT Grant Funding to be paid to the KIC-Partner in respect of the relevant Activity or Project, or CLC Tasks (as

applicable) shall be determined in accordance with the provisions of Articles 10.2 and 13 of the GA, where such balance may take the form of a recovery. Declaration of the eligible cost shall (in the case of Activities and Projects) take place in accordance with the cost reporting principles set out in Clause 6.3 and (in all cases), apart from the time period references, Article 10.2 of the GA.

## **9. Degrees and Diplomas**

- 9.1 If the KIC Partner is an institute of higher education and involved in the KIC Pillar for Education, it shall, where agreed in writing separately by KIC-LE, have the right to apply the Climate KIC label to Master and Doctorate Degrees and Diplomas, and it shall have all the rights of an Institute of Higher Education as set out in Article 8 of the FPA, which shall apply mutatis mutandis between KIC-LE and KIC Partner
- 9.2 Where KIC-LE agrees that the KIC Partner may use the Climate KIC Label, further details of the use of the EIT label to Master and Doctorate Degrees and Diplomas are set out in Annex V to the FPA.

## **10. Use of names and logos**

- 10.1 The KIC Partner shall be entitled to use the KIC-LE logo appearing on the cover page of this Agreement (or such other logo as the KIC-LE adopts as its principal logo) in connection with an Activity or Project (as applicable) and/or for the purpose of identifying itself as a KIC Partner, but for no other purpose, provided that such use:
- 10.1.1 has been approved in advance by the KIC-LE;
  - 10.1.2 is in accordance with brand usage guidelines issued by the KIC-LE;
  - 10.1.3 includes a suitable acknowledgement of the support of EIT and KIC-LE, as specified by KIC-LE from time to time.
- 10.2 The KIC Partner shall do nothing which may either lessen the distinctiveness of the KIC-LE logo or which may bring it or the KIC-LE or the KIC into disrepute.
- 10.3 The KIC Partner's name may be used by the KIC-LE solely for the purposes of describing the Activity or Project (as applicable) or for the purpose of identifying the KIC Partner. The KIC-LE may not use the KIC Partner's name or logo for any other purpose without the prior written permission of the KIC Partner acting in its sole discretion.
- 10.4 Save as provided in this **Clause 10**, the Parties agree that each shall not use the other party's name or logo for any external publicity or promotional purposes without first obtaining the written permission of the other Party, or as is set out in any regulations issued from time to time by the KIC-LE.

## **11. Termination**

- 11.1 Either Party may give notice in writing to the other terminating this Agreement (in whole or in part) with immediate effect if:
- 11.1.1 the other commits a breach of this Agreement which in the case of a breach

capable of remedy shall not have been remedied within 30 days of the receipt of a notice from the complaining Party identifying the breach and requiring its remedy. Where a breach relates to the Tasks allocated to the KIC Partner under a particular Activity or Project, or in relation to CLC Tasks, KIC-LE may (at its election, in its sole discretion, and subject to the foregoing) terminate this Agreement part only, in respect of the KIC Partner's involvement in the relevant Activity or Project, or CLC Tasks (as applicable); this shall be in addition and without prejudice to KIC-LE's rights to terminate this Agreement in its entirety; or

11.1.2 an order is made or a resolution is passed for the other's winding-up, or the other convenes a meeting of its creditors (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation, if a different legal entity, shall agree to be bound by and assume the obligations of that party under this Agreement); or

11.1.3 the other is unable to pay its debts as they fall due or has a receiver (curator), administrator (bewindvoerder) or similar authority appointed over any part of its business or assets, or ceases to carry on its business, or if events equivalent to such events occur in relation to the other party under the laws of its home jurisdiction.

11.2 This Agreement shall terminate automatically in the event that:

11.2.1 the KIC Partner ceases to be either a Core Partner or Affiliate Partner within the meaning of the KIC Articles; or

11.2.2 the Internal Agreement is terminated or expires (except where the Internal Agreement envisages or implies that this Partner Grant Agreement should survive such termination, for example where the KIC Partner terminates the Internal Agreement under Clause 5.2 in respect of the GA for the Grant Period following the Relevant Grant Period).

11.3 Termination of this Agreement for any reason shall:

11.3.1 have no effect on any obligations which expressly or impliedly survive termination;

11.3.2 not affect the accrued rights or remedies of the Parties arising in any way out of this Agreement as at the date of termination.

11.4 Where KIC Partner's Tasks during the Relevant Grant Period include CLC Tasks, the KIC Partner shall, where the termination or expiry of this Agreement brings to an end the KIC Partner's involvement in relation to the organisation of the relevant CLC, provide such support and assistance to KIC-LE as KIC-LE (including access to information and Foreground Intellectual Property generated by KIC Partner in the course of the performance of such CLC Tasks) may reasonably require to ensure the continuation of the relevant CLC activities. The terms of such assistance shall be agreed separately in writing, in good faith between the Parties. Such terms may include the payment of a reasonable fee to KIC Partner in respect of the costs and expenses incurred by it in providing such assistance.

## **12. Liability**

- 12.1 Subject to Clauses 12.3 to 12.5 inclusive, KIC Partner's liability to KIC-LE under, arising from or in connection with this Agreement is limited to its own acts and omissions and to the amount of the EIT Grant Funding received by the KIC Partner under this Agreement.
- 12.2 Subject to Clauses 12.4 and 12.5, KIC-LE's liability to KIC Partner under, arising from or in connection with this Agreement is limited to the amount of the EIT Grant Funding due to be paid to the KIC Partner under this Agreement.
- 12.3 Nothing in this Agreement limits or excludes KIC Partner's liability to EIT (whether under the EIT Contracts, the Internal Agreement, or otherwise).
- 12.4 No limitation of liability shall apply in the case of:
- 12.4.1 damage caused by a wilful act, gross negligence, fraud or other criminal offence;
  - 12.4.2 liability for infringement of intellectual property, or breach of confidentiality, injury to persons or damage to physical property; or
  - 12.4.3 liability which cannot lawfully be limited or excluded.
- 12.5 Neither Party shall be liable to the other for indirect or consequential losses.

## **13. Limited Warranty**

- 13.1 Each Party warrants to the other (and all other KIC Partners) that, to the best of its actual knowledge and belief, any information or materials supplied by it to other KIC Contributors or KIC-LE (as applicable) in the course of the performance of an Activity or Project will not, where used for the purpose for which such information or materials are supplied, infringe the Intellectual Property of any third party. No warranty is provided in respect of other uses, outside the scope of the relevant Project or Activity, unless agreed in writing by the KIC Partner.
- 13.2 In respect of any information or materials supplied by one Party to another under this Agreement, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose of such information or materials.

## **14. Force Majeure**

- 14.1 Neither Party shall be liable under this Agreement if a breach is caused by an event of force majeure, namely, circumstances outside that party's reasonable control including (but not limited to) fire, flood, storm, sabotage, strikes or lock-outs, riot, terrorism, war, rebellion or acts of local government or parliamentary authority.
- 14.2 Each of the Parties shall give notice as soon as practicable to the other(s) upon becoming aware of an event of force majeure which prevents that Party from performing its obligations under this Agreement, and of the cessation of the said event. The Parties shall attempt (so far as reasonably within their power) to mitigate the effect of the event of

force majeure and endeavour to find a solution. Should the event of force majeure continue for a period of three (3) months or more, then either Party may terminate this Agreement on notice.

## **15. Confidentiality**

- 15.1 All information which is disclosed by a Party (the “**Disclosing Party**”) to another Party (the “**Recipient**”) in connection with the KIC and which has been explicitly marked as “confidential” or of which the confidential nature is clear, is “**Confidential Information**”.
- 15.2 The Recipient hereby undertakes:
- 15.2.1 not to use Confidential Information otherwise than for the purpose for which it was disclosed;
  - 15.2.2 not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
  - 15.2.3 to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipient including all copies thereof and to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Recipient may however request to keep a copy for archival purposes only;
  - 15.2.4 to ensure that the parties that receive Confidential Information in accordance with this clause be bound to the same obligations as the Recipient.
- 15.3 The Recipient shall be responsible for the fulfilment of the above obligations on the part of their employees and the third parties to whom they disclose the Confidential Information of the Disclosing Party.
- 15.4 The above confidentiality restrictions shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:
- 15.4.1 the Confidential Information is or becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations (or other duty of confidentiality);
  - 15.4.2 the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
  - 15.4.3 the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
  - 15.4.4 the Confidential Information was already known to the Recipient prior to disclosure;
  - 15.4.5 (in the case of KIC-LE) where KIC-LE has followed the procedure in Clause 16 and has received no Confidentiality Notice in the period stated in that Clause.

- 15.5 Without prejudice to the above confidentiality restrictions, the Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the KIC as with its own confidential and/or proprietary information, but in no case less than reasonable care.
- 15.6 If any 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 (including any legal obligation to submit its result to a public evaluation authority) or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure:
- 15.6.1 notify the Disclosing Party, and
- 15.6.2 comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.
- 15.7 The confidentiality obligations under this agreement and the EIT Contracts shall not prevent the communication of Confidential Information to the EIT.

## **16. Publication**

- KIC-LE should be alerted in advance of any major articles or presentations relating to
- 16.1 Activities or Projects in time to allow consideration of the implications and wider publicity potential. Decisions to publicise any Activity or Project (or any matters relating thereto) should give due consideration to any duties of confidence owed, and should not jeopardise any potential commercial exploitation of Intellectual Property.
- 16.2 Recipients must ensure that KIC-LE's (and EIT's) contribution to funding is suitably acknowledged in all presentations and publications relating to Activities or Projects.
- 16.3 KIC-LE shall have the right to publish the details of any Activity or Project (or any part thereof) for marketing purposes, subject to any obligations of confidentiality owed to the KIC Partner.

## **17. Miscellaneous**

- Any notice or other communication to a Party required or permitted hereunder shall be
- 17.1 made in writing and shall be sent by registered mail or fax, return receipt requested, addressed to the address of such Party set forth below or to such other address as such Party shall have communicated to the other in accordance with this provision:

If to the KIC-LE: Association Climate KIC F.a.o. CEO  
Address: Level 1 Faculty Building, Imperial College London, Exhibition Road, London SW7 2AZ Or:  
Fax: 44 (0)20 7594 8720  
Email: m.ritter@imperial.ac.uk

If to the KIC Partner: notices should be sent to the address shown in Appendix 1.

- 17.2 Neither Party shall, without the prior written consent of the other Party, assign the benefits or in any way transfer the obligations under this Agreement or any part thereof to any third party.
- 17.3 In the event that one or more of the provisions contained herein is (are) held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction or by any future legislative or administrative action, such provision or provisions shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provision or provisions or the remaining provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein, unless such a construction would be unreasonable.
- 17.4 This Agreement represents the entire agreement of the Parties in relation to the subject matter thereof and supersedes all previous arrangements and understandings between the Parties in relation to the same, but nothing in this clause shall operate to exclude or limit liability for fraudulent misrepresentation.
- 17.5 Except as expressly provided for in this Agreement, neither Party shall in any way represent itself as being the other or an agent, partner, employee or representative of the other and shall not hold itself out as such or as having any power or authority to incur any obligation of any nature whether express or implied on that other's behalf.
- 17.6 Amendments to this Agreement, including to its Annexes, can only be made in writing, executed by duly authorised representatives of both Parties and shall not be in conflict with any provision of the FPA, GA and/or Internal Agreement.

## **18. Applicable Law**

- This Agreement (with the exception of the EIT Contracts) shall be governed by the laws of the Netherlands.
- 18.1
- 18.2 If a dispute arises out of or in connection with this Agreement, or the performance by either Party of their obligations under the Agreement (the "Dispute"), the Parties shall first attempt in good faith to resolve the Dispute between themselves. If for any reason the Parties are unable to resolve the Dispute within thirty (30) days of it first arising the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure<sup>2</sup> (as amended from time to time). Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR and the mediator shall nominate the place of mediation.
- 18.3 If the Dispute cannot be settled pursuant to Clause 18.2, within thirty (30) days of the date on which a mediator is appointed, it may be referred at the instance of either Party to the District Court of Amsterdam shall have non-exclusive jurisdiction.
- 18.4 Nothing in this Agreement shall limit the Parties' right to seek injunctive relief before the Amsterdam District Court or any other courts having jurisdiction.

## **19. Variation to Internal Agreement**

Both Parties agree that it may not always be practicable for Partner Grant Agreements to

- 19.1 be agreed by the deadline set in Clause 5.4 of the Internal Agreement and that, from the date of this Agreement for the remainder of the Internal Agreement, Clause 5.4 of the Internal Agreement shall cease to apply.
- 19.2 The KIC Partner hereby confirms that the Internal Agreement signed by it remains in full force and effect, notwithstanding the fact that this Agreement may not have been signed within three months of the start of the 2012 Grant Period.

IN VIEW OF WHICH the Parties hereto have executed this Agreement through the signatures of their duly authorised representatives:

Signed by: Stefano Tibaldi Title:  
For and on behalf of Agenzia Regionale Prevenzione e  
(KIC Partner) Ambiente dell' Emilia-Romagna

Signed by: Mary Ritter Title: CEO  
Climate-KIC

For and on behalf of Association Climate KIC