

# Revenue Sharing model and Agreement template

## Innovation to Market projects

To uphold the principles of EIT Health financial sustainability, all activities selected in EIT Health's portfolio and receiving funding must commit to contributing to the long-term financial sustainability targets of the KIC (EIT Health) and will be required to enter into a Financial Sustainability agreement. This agreement establishes a framework for responsible financial management, where beneficiaries are obligated to sign the Financial Sustainability agreement, acknowledging their commitment to adhere to the specified EIT Health financial models.

The "Revenue Sharing" model is the financial sustainability model that applies to **medium enterprise and large companies**.

The amount of Revenue Sharing is capped to an **amount equalling the EIT Health grant** received by the consortium, **plus** a project-specific, risk-related **minimum mark-up percentage of the EIT Health grant on top of the EIT Health grant**.

The individual Revenue Sharing shall be primarily carried by the Commercialisation Partner(s), who are expected to be Industry Partners that commercialise the product or service and, only in extraordinary cases, other types of Partners.

The Revenue Sharing shall **only apply in the event of successful commercialisation** of the project, where "Successful Commercialisation" or "Successfully Commercialised" shall mean the generation of revenue of at least EUR 10.000 in any market, of process(es)/product(s)/service(s) through Exploitation (wholly or partially) of the Result(s) of the Project during a time period of maximum three (3) years from the End Date of the Project.

The proposed revenue sharing model shall be defined at submission of the full proposal stage, the development of which will be supported by EIT Health. It must include all of the following conditions agreed upon by the consortium:

- **Compensation Mechanism**, to choose between:
  - Fixed yearly amount to be paid during the Compensation Period; or
  - Yearly percentage of the revenues resulting from the Exploitation of the Results of the Project to be paid yearly during the Compensation Period.
- **Compensation Period**, to be defined according to the following:
  - The Compensation Period shall start at the latest three years after the End Date of the Project and shall end five (5) years after the start date of the

Compensation Period, always provided that the Results of the Project are Successfully Commercialised.

- **Minimum mark-up percentage of EIT Health grant** on top of the EIT Health grant:
  - The mark-up must be a minimum of 15% of EIT Health grant.

The Net Present Value (NPV) of the model proposed by the consortium will be crucial criteria in the selection of the funded projects, and the option selected for Revenue Sharing must be outlined in the full proposal to a sufficient level of detail that allows a proper assessment of the project's risks and benefits.

The consortium agrees to commit to the financial sustainability contract to be completed under the conditions expressed in the proposal with EIT Health after project approval.

If the project is accepted into the portfolio, details of the Revenue Sharing will be agreed prior to the signing of the Project Grant Agreement (PGA) and will be outlined in a separate agreement.

Indeed, the Revenue Sharing mechanism (amount, caps, timeline, responsible party/ies, conditions, etc.,) must be fully defined and agreed upon in writing by both parties before the project starts, i.e., **release of project funding is contingent on a fully executed financial sustainability agreement between EIT Health and the commercialising entity.**

The compensation received by EIT Health from these projects will be invested in future innovation opportunities for the network.

# **Specific Sustainability Agreement**

## **Revenue Sharing Model**

### **EIT Health**

**[XXX Project]**

This Specific Sustainability Agreement, hereinafter referred to as the “**Specific Agreement**”

is effective from [xxx 202x] (“**Effective Date**”),

**BETWEEN:**

**EIT Health e.V.**, with registered office at Mies-van-der-Rohe-Straße 1C, 80807 Munich, Germany, hereinafter referred to as “**KIC LE**”;

**AND**

[xxx] hereinafter referred to as “**EIT Health Commercialisation Partner**”

KIC LE and EIT Health Commercialisation Partner hereinafter, jointly referred to as the “**Parties**” and each a “**Party**”;

**WHEREAS:**

The EIT Health Commercialisation Partner is bound by the PA Internal Agreement (“**PAIA**”) with KIC LE with effective date of January 1<sup>st</sup>, 2023, transposing the provisions of the long-term Partnership Agreement (“**PA**”) between EIT and KIC LE, in the KIC LE’s legal and operational arrangements between KIC LE and the EIT Health Commercialisation partner, as required by EIT under Article 1 and Article 5.3 of the PA;

Under the terms of the PA, KIC LE has been awarded a grant for the action 2023-2025 by the EIT (the “**Grant**”), to carry out a series of KAVAs and, for these purposes, has entered into a Grant Agreement (the “**GA**”) with EIT, with effective date of January 1<sup>st</sup>, 2023, laying down the provisions concerning the implementation of the KIC Business Plan through grants.

The EIT Health Commercialisation partner, together with other partners, has responded to the call of proposals of KIC LE and KIC LE has selected this Project (as defined below) and is willing to provide financial support for that Project.

The EIT Health Commercialisation partner has entered into a Financial Support Agreement (“**FSA**”) with the KIC LE with effective date of January 1<sup>st</sup>, 2023, laying down the contractual arrangements between them regarding their respective rights and obligations for the implementation of the Project by the EIT Health Commercialisation partner, transposing to the extent needed the provisions of the GA.

The EIT Health Commercialisation partner has also entered into a Project Grant Agreement (“**PGA**”) laying down additional contractual arrangements supplementing the FSA, regarding the Project in which the EIT Health Commercialisation partner is involved.

In the PGA it is provided for that the EIT Health Commercialisation partner shall comply with its obligations regarding financial sustainability as further described in more details in the relevant agreements, in accordance with applicable law, pertaining to financial sustainability.

In this Specific Agreement the Parties lay down the arrangements regarding a financial sustainability mechanism for the benefit of KIC LE, whereby a financial compensation shall be paid by the EIT Health Commercialisation partner to KIC LE in case of Successful Commercialisation (as defined below) of the Results (as defined below) as agreed in this Specific Agreement.

The EIT Health Commercialisation partner is aware that the financial compensations that are paid to KIC LE under the financial sustainability mechanisms of KIC LE will be used to further advance KIC LE activities in scope of its mission to foster innovation and entrepreneurship for better health and more sustainably health systems in Europe.

## 1. Definitions

### 1.1 Definitions – General

Words in this Specific Agreement beginning with a capital letter shall have the meaning defined either herein or in the Rules of Participation for Horizon Europe, the PAIA, the PA, the FSA including its annexes or the PGA.

When reference is made to a “**Section**” within this Specific Agreement, this means a reference to any section of this Specific Agreement.

### 1.2 Specific Definitions

“**Affiliate**” means, in relation to each Party, any person, firm or other entity that directly or indirectly controls, is controlled by or is under common control with, such Party. “Control”, “controlled by” and “under common control” refers (i) to the ownership, directly or indirectly, of more than fifty percent (50%) of the outstanding voting securities or the capital stock of, or other comparable equity or ownership interest in the respective legal entity, or (ii) in the absence of such ownership interest, to the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the respective legal entity, by contract or otherwise.

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

“**Exploitation**” or “**Exploit**” shall mean any direct or indirect use of Results, in whatever form, in particular, (i) in the development, creation or marketing of products or processes, or (ii) in the creation and provision of services.

“**Successful Commercialisation**” shall mean the generation of revenue of at least EUR 10,000.00 through Exploitation (wholly or partially) of Result(s) during a time period of maximum three (3) years from the End Date of the Project.

“**Compensation Period**” shall mean the period during which the financial compensation under this Specific Agreement is to be paid by the EIT Health Commercialisation partner, as further described in Section 2.

“**Compensation Mechanism**” shall mean the mechanism of financial compensation to be paid by the EIT Health Commercialisation partner, as determined in accordance with Section 2 and as may be further detailed in **Annex 1**.

“**Maximum Amount**” shall mean the maximum amount of financial compensation to be paid by the EIT Health Commercialisation partner, as determined in accordance with Section 2 of this Specific Agreement and as may be further detailed in Annex 1.

“**End Date of the Project**” shall mean the end date of the Project in accordance with the provisions of the PGA (see Article 3.2.2 of the PGA).

## 2. Financial Compensation

2.1 The Parties acknowledge the principle of risk sharing between the Parties. Therefore, the Parties agree that upon Successful Commercialisation of Results, a financial compensation shall be paid by the EIT Health Commercialisation partner to KIC LE. For the avoidance of doubt, these financial compensations are not a reimbursement of the Grant and is not to be qualified as such.

2.2 The Parties agree on the following modality of the financial compensation.

2.2.1 Compensation Period: The Compensation Period shall start at the latest three (3) years after the End Date of the Project (“**Compensation Period Start Date**”) and shall end five years (5) thereafter (“**Compensation Period End Date**”).

2.2.2 Maximum Amount: The Maximum Amount is further detailed in Annex 1. The Maximum Amount is determined as the sum of the aggregated grant provided by KIC LE for the Project and a minimum premium of 15 %. In the event that the Maximum Amount is fully paid to KIC LE before the ending date of the Compensation Period, no further payments shall have to be made by the EIT Health Commercialisation partner under this Specific Agreement.

2.2.3 Compensation Mechanisms: (Fixed fee or revenue, either one of the other)

(FIXED FEE): The Compensation Mechanism is determined as a fixed yearly amount to be paid during the Compensation Period, as further detailed in Annex 1 (“**Compensation Amount**”), or

(REVENUE SHARING): The Compensation Mechanism is determined as a yearly percentage of the revenues resulting from Successful Commercialisation (“**Compensation Amount**”); the Compensation Amount has to be paid yearly during the Compensation Period, as further detailed in Annex 1.

### (2.3 Only for the REVENUE SHARING OPTION)

2.3 The EIT Health Commercialisation partner shall during the Compensation Period provide on a yearly basis the following information to KIC LE:

- 2.3.1 Official revenue report outlining gross revenues / net profits resulting from the Exploitation allowing EIT Health to validate the yearly Compensation Amount. In case the revenue sharing mechanism is limited to a specific geographical market, official revenue reports for the market in question shall be provided.
- 2.3.2 The calculation of the yearly Compensation Amount in accordance with the terms and conditions of this Specific Agreement.

The information detailed in section 2.3 must be submitted promptly once the official revenue reports for the referenced year are available, in accordance with local statutory requirements. In any case, this information should be provided no later than June 1st of the subsequent year.

### **3. Terms of Payment**

- 3.1 KIC LE shall issue an invoice for the Compensation Amount to the EIT Health Commercialisation partner on the basis of the information provided by the EIT Health Commercialisation partner under Section 2.3.
- 3.2 Payments of the invoices shall be made by the EIT Health Commercialisation partner within thirty (30) days after the invoice date.
- 3.3 Invoices shall be paid by EIT Health Commercialisation partner to the banking institution/account number provided by KIC LE.
- 3.4 The compensation Amount is plus statutory VAT (if applicable) as charged by KIC LE in the invoice.

### **4. Audit Right**

- 4.1 The EIT Health Commercialisation partner shall cooperate with KIC LE in connection with the examination of the EIT Health Commercialisation partner's data or information relating to EIT Health Commercialisation partner's Exploitation, which may reasonably be required or requested by KIC LE to audit the proper fulfilment of the EIT Health Commercialisation partner's obligations under this Specific Agreement. Should the EIT Health Commercialisation partner be unable to provide all information required for such audit and previously in the EIT Health Commercialisation partner's possession but which the EIT Health Commercialisation partner has failed to retain, the EIT Health Commercialisation partner shall reimburse KIC LE for any costs, resulting from such failure to provide the information.
- 4.2 At any time during the term of this Specific Agreement, upon reasonable notice to the EIT Health Commercialisation partner, KIC LE and its representatives, including an independent public accountant engaged by KIC LE and reasonably acceptable to the EIT Health Commercialisation partner, shall have the right to audit the EIT Health Commercialisation partner's data or information, and financial records relating to the execution of this Specific Agreement in particular pertaining to the calculation of the Compensation Amount. Such records shall include accounts, invoice records, and payments necessary to determine the Compensation Amount. To the extent such records are deemed confidential, the EIT Health Commercialisation partner will give reasonable

access to the records to an independent public accountant selected by KIC LE who will audit the records. The cost of such audit shall be borne by the EIT Health Commercialisation partner. This audit right shall not be exercised by KIC LE more than once (1) in each calendar year.

- 4.3 In the event an audit reveals that this Specific Agreement has not been properly fulfilled by the EIT Health Commercialisation partner, the EIT Health Commercialisation partner shall pay to KIC LE the Compensation Amount due, increased with a penalty of three (3) %. In such event, the expenses for such auditing shall be borne by the EIT Health Commercialisation partner and shall be paid within thirty (30) days following request by KIC LE.

## **5. Entry into force and Term**

This Specific Agreement shall have effect from the Effective Date identified at the beginning of this Specific Agreement. It shall continue to be in full force and effect until all obligations resulting from this Specific Agreement are fulfilled.

## **6. Breach**

- 6.1 If the EIT Health Commercialisation partner fails to comply with any of the conditions set out in this Specific Agreement, KIC LE may reduce, suspend or withhold any financial support under any financial support agreement or project agreement, or require all or any part of the financial support to be repaid. The EIT Health Commercialisation partner must repay any amount required to be repaid under this condition within thirty (30) days of receiving the demand for repayment from the KIC LE.
- 6.2 In the event of non-payment of the due Compensation Amount by the EIT Health Commercialisation partner, KIC LE shall give the EIT Health Commercialisation partner written notice of such default. If such default is not cured within thirty (30) days from the date of communication of such notice, KIC LE may execute all contractual and legal rights and remedies available to it.
- 6.3 In the event of any delay in payments, the EIT Health Commercialisation partner shall pay interest on the amount delayed at the rate of zero-point eight percent (0.8%) per month.
- 6.4 In addition to the above, in the event the EIT Health Commercialisation partner fails to pay any Compensation Amount to KIC LE on the due date, KIC LE shall be entitled to claim from the EIT Health Commercialisation partner a penalty of three (3)% of the Compensation Amount not paid when due.

## **7. Assignment - transfer of Results**

- 7.1 This Specific Agreement may be assigned in whole or in part by KIC LE to any of its Affiliated. In the case this occurs, the EIT Health Commercialisation partner will be notified in writing by KIC LE.
- 7.2 No rights or obligations of the EIT Health Commercialisation partner arising out of this Specific Agreement may be assigned or transferred, in whole or in part, to any third party without the KIC LE's prior written approval. Any assignee shall continue to be bound by all terms and conditions of this Specific Agreement.



- 7.3 In the event that the Results are transferred to a third party, the EIT Health Commercialisation partner shall ensure that such third party shall assume and honour all obligations in terms of financial compensation to KIC LE under this Specific Agreement.

## **8. Order of Precedence**

- 8.1 This Specific Agreement complements the PAIA , the FSA and PGA. In the event of any conflict or discrepancy between the provisions of the Specific Agreement and the PGA, the provisions of this Specific Agreement will always take precedence over the provisions of the PGA.
- 8.2 For the avoidance of doubt, it is agreed that if part of the Project (or a derivative, prolongation thereof) and/or the EIT Health Commercialisation partner have been included in an application to future calls/programmes and have been awarded under such calls, the EIT Health Commercialisation partner hereby declare and acknowledge that the term of engagement in any prospective EIT Health calls/programmes shall not override or amend, in any manner whatsoever, the provisions set forth in this Specific Agreement and the terms and conditions established in this Specific Agreement shall remain fully in force.

## **9. Applicable Law and Jurisdiction**

- 9.1 This Specific Agreement shall be construed in accordance with and exclusively be governed by the laws of Germany to the exclusion of its rules of conflict of laws.
- 9.2 The Parties shall endeavour to settle their disputes amicably.
- 9.3 Exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement or regarding its validity, which cannot be solved amicably, shall be Munich, Germany.

## **10. Miscellaneous**

- 10.1 This Specific Agreement constitutes the entire agreement of the Parties relating to the subject matter hereof and, unless explicitly stated otherwise herein, supersedes all prior agreements, declarations of intent and other arrangements whether written or oral, binding or non-binding that may exist between the Parties in respect of the subject matter of this Specific Agreement or parts thereof. There are no side agreements to this Specific Agreement.
- 10.2 Any agreement, statement, declaration, notification or other communication that is required to be in writing under this Specific Agreement may, in addition to compliance with the written form requirement of section 126 German Civil Code (*BGB*), also be made by sending (including via e-mail) a physically or digitally signed document as a PDF digital signature software commonly used in Germany (e.g., *DocuSign* or *Adobe Sign*).
- 10.3 Any amendment of, supplement to or termination (*Aufhebung*) of this Specific Agreement, including this Section 11.3, must be made in writing in order to be effective, unless a stricter form (e.g., notarization) is required by mandatory law. This also applies to any waiver of any right or claim under this Specific

Agreement.

- 10.4 In the event that one or more provisions of this Specific Agreement is or becomes partly or entirely void, invalid or unenforceable, the validity and enforceability of the remaining provisions of this Specific Agreement is not affected thereby. In such case, the Parties shall replace the partly or entirely void, invalid or unenforceable provision with a valid and enforceable provision, which the Parties would have agreed on had they been aware of the voidness, invalidity or unenforceability of the respective provision. The same applies in the event that this Specific Agreement contains any unintended gaps (*unbeabsichtigte Regelungslücken*). It is the express intention of the Parties that the preceding provisions of this Section 11.4 do not merely shift the burden of proof (*keine bloße Beweislastumkehr*) but that section 139 German Civil Code (*BGB*) in its entirety does not apply, so that none of the Parties will have to argue (*darlegen*) and prove (*beweisen*) the Parties' intent to uphold this Specific Agreement even without the void, invalid, unenforceable or missing provision.
- 10.5 The table of contents, headings and sub-headings of this Specific Agreement are inserted for convenience purposes only and do not affect in any way the interpretation of this Specific Agreement.
- 10.6 Unless the context otherwise requires (i) the terms "including" and "in particular" and all forms and derivations thereof always mean "including, without limitation" and "in particular, without limitation", respectively; (ii) the term "through" when describing a range, period, span or scope always means "through and including", (iii) the words "hereof", "herein" and "hereunder" and words of similar import refer to this Specific Agreement as a whole and not to any particular provision of this Specific Agreement; (iv) any reference to a gender includes all other genders and (v) definitions contained in this Specific Agreement are applicable to the singular as well as the plural forms of such terms.
- 10.7 Where a German term has been inserted in quotation marks and/or brackets and/or italics it alone (and not the English term to which it relates) is authoritative for the purpose of the interpretation of the relevant English term in this Specific Agreement.
- 10.8 This Specific Agreement is drafted in English for convenience purposes only and the fact that the English language is used is not a reason to refer to the laws, doctrine or case law of any English-speaking jurisdiction in the interpretation of this Specific Agreement.

## Signatures

### AS WITNESS:

The Parties have caused this Specific Agreement to be duly signed by the undersigned authorized 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 Specific 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 Specific Agreement.

### **EIT Health e.V. [KIC LE]**

Name(s)

Title(s)

Date

Signature(s)

### **XXX [EIT Health Commercialisation Partner]**

Name(s)

Title(s)

Date

Signature(s)

## **Annex 1**

### **Compensation Mechanism**

The Parties agree that the Compensation Mechanism as referred to in Section 2.2 is as follows: xxx

### **Maximum Amount**

The Parties agree that the Maximum Amount as referred to in Section 2.2 is as follows: xxx