



CLIMATE-KIC HOLDING B.V.

COMMUNITY AGREEMENT

Parties

- (1) **CLIMATE-KIC HOLDING B.V.** a company (number 63299658) duly incorporated under the Laws of the Netherlands, with registered office located at Padualaan 8, 3584CH, Utrecht, Netherlands ("**Climate-KIC**");

and

- (2) "**COMMUNITY MEMBER**"

Name	
Legal status	
Address of registered office	

(each a "**Party**" and together the "**Parties**")

Background

- A. Climate-KIC's mission is to contribute to innovation in climate change mitigation and adaptation.
- B. Climate-KIC, together with its community members, form the community (the "**Community**") made up of organisations from a wide range of sectors, geographies and structures who wish to work together to focus on innovation in climate change mitigation and adaptation.
- C. Climate-KIC was established to enable the Community to function as an integrated collaborative group and to coordinate its activities. Climate-KIC supports its community members by providing access to an ecosystem to engage with each other, by building a network that is recognised internationally in the field of climate change innovation and by supporting its community members in identifying, developing and bringing climate change adaptation and mitigation technologies to the market.
- D. The Community Member has demonstrated achievements in the field of climate change mitigation and adaptation and fills an expertise/innovation gap in a strategic area of the Community.

IT IS AGREED AS FOLLOWS:

1. Purpose and Interpretation

- 1.1. The purpose of this Community Agreement ("**Agreement**") is to set out the rights and obligations of the Community Member and Climate-KIC in connection with the Community Member's membership of the Community.
- 1.2. The Community Activity Terms, Third Party Funding Terms and Climate-KIC Funding Terms are part of the Agreement. Any inconsistency between these documents shall be resolved by giving precedence in the following order: (i) the Agreement, including Annexes thereto; the Community Activity Terms; (iii) the Climate-KIC Funding Terms; and (iv) the Third Party Funding Terms.
- 1.3. To the extent applicable, Parties agree that - upon entering into the Agreement - the terms and conditions of the Agreement shall replace the terms and conditions of any previous partnership, collaboration or cooperation agreement existing between Parties.

2. Duration of Community Agreement

- 2.1. The Community Member shall remain bound by the terms of this Agreement from until the date it withdraws or is excluded in accordance with the terms of this Agreement.
- 2.2. The Community Member may not assign or transfer any of its rights or obligations under this Agreement to any other party, except with prior written approval of Climate-KIC, which will not be unreasonably withheld.
- 2.3. In the event of the sale of all or substantially all assets of a Community Member, a merger, demerger, consolidation or acquisition of a Community Member, or any change in the ownership of more than fifty percent (50%) of the capital voting stock of a Community Member in one or more related transactions (a "**Change of Control**"), Climate-KIC shall be entitled to terminate the Agreement within a period of thirty (30) days after a notification of the Community Member of such Change of Control.

3. The Community and its Relationship Teams

- 3.1. The Community is supported by Climate-KIC relationship teams ("**Relationship Teams**").
- 3.2. Relationship Teams will use their efforts to:
 - (i) create and coordinate new collaborative opportunities with community members for climate innovation within the Community's platforms; and
 - (ii) provide a platform to bring together expertise and resources of community members to generate, incubate and accelerate climate innovation and to educate their innovators and entrepreneurs.
- 3.3. The Community Member will be allocated to a Relationship Team which will be its first point of contact for all matters relating to the Community.
- 3.4. The Community Member shall engage with its Relationship Team and, where appropriate, with the wider research, business and governmental communities and the public about its activities with the

Community; foster dialogue and debate and engage with activities on climate change mitigation and adaptation; and highlight the support of Climate-KIC and its mission.

4. Rights and Obligations of Community Members

4.1. *General Obligations*

The Community Member undertakes to participate in the Community to further its mission and to cooperate, perform and timely fulfil their obligations under this Agreement in a good faith manner.

4.2. *Sharing of Information*

The Community Member shall provide all information reasonably required by Climate KIC and the Community that is necessary to carry out its tasks, projects and activities and shall take reasonable measures to ensure the accuracy of any information and materials it supplies to the Community.

4.3. *Rights of Community Member*

Subject to the applicable terms and conditions of the specific Community Activity (defined below), the Community Member may participate in the Community's projects and activities (each a "**Community Activity**") and contribute its expertise to focus areas identified in Climate-KIC's multi-year strategy to develop the Community Activities.

In addition, and to the applicable terms and conditions of the specific Community Activity in question, the Community Member may:

- (i) receive information from the Community; and
- (ii) use the Climate-KIC Logo (as defined in clause 8) in accordance with the terms of this Agreement and any subsequent protocols communicated to the Community Member.

5. Community Activities

5.1. The Community Member shall cooperate with other community members and Climate-KIC in agreed Community Activities. Before the start of each Community Activity, the Community Member and Climate-KIC shall agree on the terms of this Community Activity (the "**Community Activity Terms**") in writing. The Community Activity Terms shall inter alia include:

- (i) a description of the activities to be carried out by the Community Member;
- (ii) the identity of the Community Member and if any, third parties involved in this Community Activity;
- (iii) the timeframe within which this Community Activity will be carried out;
- (iv) any intellectual property rights or economic benefit sharing requirements applicable to the Community Activity;
- (v) the contributions, in kind and in cash, to be made by the Community Member and Climate-KIC to the Community Activity;
- (vi) the fees to be paid by the Community Member to Climate-KIC in connection with the Community Activity (the "**Fees**");

(vii) the identity of the source of third party funding and the conditions of funding imposed by such third party funders (the "**Third Party Funding Terms**"); and

(viii) the conditions of funding imposed by Climate-KIC ("**Climate-KIC Funding Terms**").

- 5.2. The Community Member has no obligation or right to receive funding from Climate-KIC or third party funders. In the event the Community Member receives funding from Climate-KIC or third party funders, it therewith acknowledges that it accepts the Third Party Funding Terms and the Climate-KIC Funding Terms. These terms are available for inspection on Climate-KIC's URL or SharePoint site or via other location as communicated to the Community Member from time to time.
- 5.3. Without limiting the scope of potential Community Activities, on behalf of a Community Member and, subject to the applicable terms and conditions of the specific Community Activity, Climate-KIC may apply for funding from third parties to a Community Member, in which case Climate-KIC acts as an agent for such Community Member. To the extent such funding requests are approved by the third party funders, Climate-KIC may provide funding to the Community Member and other community members and, where applicable, in-kind contributions to activities that directly contribute to innovation in climate change mitigation and adaptation.
- 5.4. Although Climate-KIC shall support the Community Activities, the Community Member shall remain primarily responsible for the Community Activity's feasibility, implementation, progress and initiating possible changes to the Community Activity during its implementation.

6. Fees

- 6.1. The applicable Fees will be agreed in the Community Activity Terms.
- 6.2. The amount of Fees mentioned in this Agreement and the Community Activity Terms are exclusive of any value added tax or any other locally applicable equivalent transaction taxes (including sales tax, excise tax, goods and services tax, consumption tax, business tax or similar taxes), all of which is payable by the Community Member at the rate and in the manner from time to time prescribed by law. In the event of withholding, the Community Member is required to gross up the amounts charged by Climate-KIC such that the Climate-KIC receives an amount equal to that initially due before withholding.

7. Confidential Information, Data Protection

- 7.1. Each Party undertakes that it shall not at any time during this Agreement and for a period of five (5) years after termination disclose to any person any information disclosed to it by the other Party concerning Climate-KIC and the Community Activities and which has been explicitly marked as "confidential" or of which the confidential nature is clear, is "**Confidential Information**", except as permitted by clause 7.2.

- 7.2. Each Party may disclose the other Party's Confidential Information:

(i) to, its employees, officers, agents, consultants or subcontractors and those of its Affiliates¹ ("**Representatives**") and any other community member of Climate-KIC who needs to know such

¹ In this Agreement, "Affiliate" means any legal entity that is under the direct or indirect control of a Party, or under the same direct or indirect control of a Party, or that is directly or indirectly controlling a Party. "Control" may take either of the following forms: (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity; (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

information for the purposes of carrying out the Party's obligations under this Agreement, provided that the disclosing Party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 7 as though they were a Party to this Agreement. The disclosing Party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause 7; and

(ii) as may be required by law, court order or any governmental or regulatory authority.

7.3. Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party or to be implied from this Agreement.

7.4. Notwithstanding the foregoing provisions, the obligation set out in clause 7.1 shall not apply to:

(i) information, which at the time of disclosure, was published, known publicly, or otherwise in the public domain;

(ii) information which, after disclosure, is published, becomes known publicly, or otherwise becomes part of the public domain through no fault of the receiving Party;

(iii) information which, after disclosure, is made available to the receiving Party in good faith by a third party who is under no obligation of confidentiality or secrecy to the disclosing Party; or

(iv) information developed by the receiving Party independently.

7.5. In respect of any information or materials supplied by one Party to the other 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.

7.6. The Parties shall comply with Data Protection Laws. As used in this Agreement, the terms "**data controller**", "**data processor**" and "**personal data**" are as defined in the Data Protection Laws. "**Data Protection Laws**" means Directives 95/46/EC and 2002/58/EC (as amended by Directives 2006/24/EC and 2009/136/EC), any local legislation implementing such Directives, and in each case, as such law may be amended, supplemented or replaced from time to time.

7.7. The data processor shall process personal data only to the extent, and in such a manner, as is necessary for the Community Activity and in accordance with the data controller's instructions from time to time and shall not process the personal data for any other purpose.

7.8. The data processor shall promptly comply with any request from the data controller requiring the data processor to amend, transfer or delete the personal data and shall provide the data controller with full co-operation and assistance in relation to any request made by a data subject to have access to that person's personal data.

7.9. The data processor shall not transfer the personal data outside the European Economic Area without the prior written consent of the data controller or, alternatively, in the absence of the standard data protection model clause agreement adopted by the European Commission.

7.10. The data processor shall promptly inform the data controller if any personal data is lost or destroyed or becomes damaged, corrupted, or unusable or if it becomes aware of any unauthorised or unlawful processing.

7.11 The data processor warrants that:

- (i) it will process the personal data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and
- (ii) it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data including, but not limited to, appropriate security measures.

8. Climate-KIC's Logo, Third Party Intellectual Property

8.1. The logo appearing on the cover page of this Agreement (or such other logo as Climate-KIC adopts as its principal logo) (the "**Climate-KIC Logo**") may only be used by the Community Member in connection with Community Activities and to identify itself as a member of the Community, subject to the conditions in clause 8.2.

8.2. The Community Member shall always:

- (i) use the Climate-KIC Logo in accordance with instructions and guidelines of Climate-KIC notified to the Community Member from time to time;
- (ii) include a suitable acknowledgement of the support of Climate-KIC in the form specified by Climate-KIC from time to time; and
- (iii) inform Climate-KIC if it uses the Climate-KIC Logo in connection with any external publicity or promotion for Climate-KIC and projects and activities of the Community.

8.3. The Community Member shall do nothing which may either lessen the distinctiveness of the Climate-KIC Logo or which may bring it or Climate-KIC into disrepute.

8.4. Climate-KIC may use the Community Member's name and logo for the purposes of describing the projects and activities of the Community or identifying the Community Member and for promotion of Community Activities. Any other use will require prior written permission of the Community Member.

8.5. Each Party has and will maintain all necessary intellectual property permissions, licenses and consents to enter into this Agreement and engage in the Community Activities. Each Party warrants to the other that use of, or access to, any of the intellectual property made available by it in connection with this Agreement and Community Activities will not infringe any intellectual property rights of any third party and agrees to be responsible for liability arising from such infringement.

9. Withdrawal, Termination and Survival

Withdrawal

9.1. The Community Member may withdraw from the Community at any time by giving at least four weeks' notice through registered mail to the CEO of Climate-KIC of its withdrawal. Until its withdrawal, the rights and obligations of the Community Member shall remain in full force and effect.

Termination

9.2. A Community Member that does not comply with provisions of this Agreement or any of the agreements entered into by Climate-KIC on behalf of the Community or does not fulfil the conditions referred to in clause 5.1 will be in "default" for the purposes of this clause 9.

- 9.3. In the event of a default which is irremediable or is not remedied within one month of the date of receipt of a written notice requiring the default to be remedied from Climate-KIC, Climate-KIC may decide to terminate the Community involvement of the defaulting Community Member.
- 9.4. Upon a decision to terminate the Community involvement in accordance with clause 9.3, Climate-KIC shall send a notice of decision of termination stating the reasons of termination which shall take effect after expiry of a period of thirty (30) days. In the event of termination pursuant to Clause 9.3, a Community Member shall not be reimbursed by Climate-KIC for the Fees that were paid in advance.
- 9.5. Climate-KIC may terminate the Community involvement of the Community Member on notice with immediate effect if:
- (i) the Community Member prejudices the Community in an unreasonable manner; or
 - (ii) the Community Member is granted a moratorium of payments or has been declared insolvent; or bankrupt or if similar measures have been taken under foreign law.

Effects of Withdrawal or Termination

- 9.6. After the termination by Climate-KIC or the withdrawal by the Community Member, the rights and obligations under this Agreement shall lapse, save for:
- (i) clause 7, 8.4, 8.5, 9 and 10 through 14;
 - (ii) with respect to Community Activities relating to a grant, until the full completion of the Community Activities in which the Community Member has been involved at the moment of withdrawal from the Community;
 - (iii) the liability of the Community Member for its Community Fee, as far as applicable, in relation to the current financial year and as applied to the full completion of the Community Activities in which the Community Member has been involved at the moment of withdrawal from the Community; and
 - (iv) commitments entered into or liabilities incurred by either Party towards the other Party prior to such withdrawal or termination including but not limited to Third Party Funding Terms and Climate-KIC Funding Terms.
 - (v) the obligation of a (former) Community Member to pay Fees for services rendered or activities performed by Climate-KIC for the benefit of such Community Member.

10. Liability

- 10.1. Subject to clauses 10.2, 10.3, 10.4 and 10.5, Climate-KIC's liability in each calendar year (taken together as a whole together with its Affiliates) to the Community Member (taken together as a whole with its Affiliates) under, arising from or in connection with this Agreement is limited to the amount of fees paid by such Community Member in that calendar year, capped at fifty thousand euros (€ 50,000).
- 10.2. The overall maximum aggregate liability of Climate-KIC (taken together as a whole with its Affiliates) to the Community (taken together as a whole with its affiliates) under, arising from or in connection with the Community and Community Activities is limited in each calendar year to € 250,000.

- 10.3. Each Party shall only be liable for liabilities, costs, expenses, damages or losses suffered or incurred by Climate-KIC to the extent that they are caused by that Party (or its Affiliates).
- 10.4. No limitation of liability shall apply to the extent that liability cannot lawfully be limited or excluded.
- 10.5. Neither Party shall be liable to the other for indirect or consequential losses.

11. Notices

- 11.1. Notices to Climate-KIC under the Agreement shall be in writing (by email or letter) to the following address:

Climate-KIC Holding B.V.
21 Great Winchester Street
London EC2N 2JA
United Kingdom
partners@climate-kic.org

or such other address as notified to the Community Member in writing from time to time.

- 11.2. Notices to the Community Member shall be in writing (by email or letter) and shall only be sent to the registered address, emails and numbers set out on page 1 of this Agreement. The Community Member may change its registered addresses, emails and numbers provided that they have notified the Climate-KIC in writing, such change to be effective upon receipt of acknowledgement by Climate-KIC.
- 11.3. Notification by letter includes delivery by postal services and courier services.
- 11.4. Any written notice or other communication to be given pursuant to this Agreement shall be effective upon receipt and shall be deemed to have occurred:
- (i) if delivered by hand, at the time of delivery;
 - (ii) if sent by email, at the time the email was sent;
 - (iii) if sent by regular mail five working days after posting; and
 - (iv) if sent by registered mail upon registered delivery of the mail to the recipient.

12. Miscellaneous

- 12.1. Climate-KIC may without the prior written consent of the Community Member assign, transfer or otherwise delegate (in whole or in part) or charge or deal in any manner with the benefit or the rights under this Agreement.
- 12.2. Climate-KIC may without notice set off any liability of Community Member to Climate-KIC against liability of Climate-KIC to Community Member whether or not liability arises under this Agreement whether either liability is present or future, liquidated or unliquidated and whether or not either liability arises under this Agreement.
- 12.3. Amendments to this Agreement can only be made in writing and signed by duly authorised representatives of the Parties.

- 12.4. Nothing in the Agreement shall be construed as or shall operate to create a partnership or joint venture of any kind, an agreement of employment or a relationship of principal and agent between Climate-KIC and the Community Member, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 12.5. If any part or provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be rendered void, invalid or unenforceable, such voidness, validity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect and the Parties shall use all reasonable endeavours to replace the relevant provision with one that is enforceable and which is closest to the Parties' intent of that provision.
- 12.6. This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has signed at least one counterpart. Each counterpart when executed shall be treated as an original and all the counterparts together shall constitute one and the same instrument.

13. Resolving Disputes

- 13.1. If any dispute arises in connection with this Agreement, the CEO (or delegate) of the Community Member and the Climate-KIC CEO (or delegate) shall, within 14 days of a written request from one Party to the other, meet in a good faith effort to resolve the dispute.
- 13.2. In the event that the dispute arising under this Agreement cannot be resolved in accordance with Clause 13.1, Parties will refer the dispute to mediation . A Party that wishes to escalate the dispute to mediation will give the other party written notice of this intention. Upon receipt of this notice, Parties will approach the *Mediatorsfederatie Nederland* with a request to propose a suitable mediator for their dispute. The proceedings shall be conducted in the English language.
- 13.3. All disputes or differences arising in connection with this Agreement which cannot be settled amicably under clause 13.1 and 13.2 within six months, shall be subject to the exclusive jurisdiction of the courts of Amsterdam.

14. Governing Law

This Agreement shall be governed by the laws of Netherlands.

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

Signed by:

Title:

For and on behalf of

(Community Member)

Signed by:

Title:

For and on behalf of **CLIMATE-KIC HOLDING B.V.**

ANNEX 1 – ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO COMMUNITY MEMBERS PARTICIPATING IN EIT GRANT

Identity of Community Member (and any third parties) involved	See applicable Task Setup Sheet, Task Request and Task Confirmation Letter
Description	See applicable Task Setup Sheet, Task Request and Task Confirmation Letter
Milestones and Timeframes	See applicable Task Setup Sheet, Task Request and Task Confirmation Letter
Term	See applicable Task Setup Sheet, Task Request and Task Confirmation Letter
Fees (including fee reviews/uplift arrangements)	<p>Subject to the terms of the Agreement, the Fees connected to 2017 EIT Grant participation will consist of annual fee of €12,500 per annum, with the following (initial) discounts being applied where relevant:</p> <ul style="list-style-type: none"> (i) €5,000 per annum for small and medium sized SMEs²; and (ii) €500 per annum fee for micro SMEs³. <p>Climate-KIC shall review the Fees once a year and has the right to increase the Fees once per year. Such decision to increase the Fees shall be communicated by Climate-KIC to the Community Member in writing.</p>
Identity of source of any third party funding, Third Party Funding Terms	EIT. See FPA, SGA and other guidance and documents issued in relation to EIT grant.
Climate-KIC Funding Terms	See CKIC guidance and documents in relation to EIT grant. Without limitation, the Community Member agrees to promptly repay any invoices raised by Climate-KIC in connection with the pass through of EIT disallowed pre-finance and/or audit recoveries.
Authorised Persons to Represent Community Member	As advised by the Community Member from time to time
Other	As advised by Climate-KIC from time to time

² See http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm for definition.

³ See http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm for definition.

ANNEX 2 - FORM OF FRAMEWORK DOCUMENT FOR STRATEGIC ALLIANCES AND OTHER COLLABORATIONS

As per Section 5.1 of the Climate-KIC Community Agreement

Identity of Community Member (and any third parties) involved	
Description of Strategic Alliance (if applicable)	
Milestones and Timeframes	
Term	
Records and Reports	
Reviews and Audit	
Intellectual Property and Personal Data	
Contributions (in kind or otherwise) from Community Member and Climate-KIC (include Climate-KIC resourcing plan)	
Fees (including fee reviews/uplift arrangements)	
Economic Benefit Sharing	
Exit Strategy	
Regulatory Requirements	
Identity of source of any third party funding, Third Party Funding Terms	
Climate-KIC Funding Terms	
Other	

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

Signed by: _____

Title: _____

For and on behalf of **CLIMATE-KIC HOLDING B.V.**

Signed by: _____

Title: _____

For and on behalf of _____ (Community Member)