



# Mutual agreement for non-disclosure



This non-disclosure agreement (“Agreement”) is made between:

1. **KIC InnoEnergy SE**, a European public limited liability company (*Societas Europaea*) having its registered place of business at Kennispoort, 6<sup>th</sup> floor, John F. Kennedylaan 2, (5612 AB) Eindhoven, the Netherlands (“**EIT InnoEnergy**”);

and

2. [**Full name of the company**], a [**legal form**] company under [**jurisdiction**] law, having its registered place of business at [**full business address**] (the “**Company**”);

EIT InnoEnergy and the Company each a “**party**” and jointly the “**parties**”;

#### WHEREAS:

- A. EIT InnoEnergy and the Company wish to investigate [**the possibilities of a future collaboration**] (the “**Authorized Purpose**”);
- B. the Company may provide EIT InnoEnergy with confidential information and *vice versa* and the Parties’ employees and/or representatives may exchange confidential information in meetings and / or exchange written or oral communications with a view to the Authorized Purpose: and
- C. Any and all communications, data and information provided by a party, its Affiliates (as defined under 5 below)(such party and its Affiliates jointly and separately: the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) in relation to the Authorized Purpose is to be treated in accordance with this Non-Disclosure Agreement and each party providing such information wishes to ensure that this information remains strictly confidential, except when mentioned otherwise in this Agreement.

#### THE PARTIES HEREBY AGREE UPON THE FOLLOWING:

##### Article 1 – Non-Exclusivity, no grant, no license, etc.

Nothing in this Agreement shall:

- a. obligate either party to disclose any information to the other party;
- b. obligate either party to buy, sell or license anything from/to the other party, or to enter into any other agreement with the other party;
- c. be construed as a grant by implication, estoppel or otherwise, of a license of any kind by the Disclosing Party to the Receiving Party e.g. to make, have made, use, provide or sell any product or service using Confidential Information or as a license under any patent, patent application, utility model, copyright, mask work right, or any other intellectual property right;
- d. preclude either party from pursuing any business opportunity with any third party; or
- e. be construed as a representation that the Receiving Party is or will not pursue competitive business activities or is or will not develop products, services, information or technologies



or have these developed for it or receive them from third parties which may be similar as (or compete with) the products, services, information or technologies discussed in relation to the Authorized Purpose.

However, the Confidential Information cannot be used for either of the non-excluded activities mentioned sub (d) and (e) above.

## **Article 2 - Confidential information**

The Disclosing Party may provide the Receiving Party with certain information in relation to the Authorized Purpose (such information being “**Confidential Information**”). Such information may, without limitation, consist of business and/or financial records, specifications, samples, photographs, drawings or other documents, data or information of whatever nature. All information provided by the Disclosing Party to the Receiving Party in relation to the Authorized Purpose in whatever form (including on paper, electronically, by web access, on magnetic media, orally or otherwise) qualifies as Confidential Information, regardless of whether it is specifically identified as being confidential or not.

## **Article 3 - Exclusions from Confidentiality**

The parties agree that information disclosed pursuant to this Agreement which would otherwise be Confidential Information shall not qualify as such if the Receiving Party proves by written record that such information:

- a. is or has become part of the public domain without violation of this Agreement;
- b. is known and on record at the Receiving Party prior to disclosure by the Disclosing Party;
- c. is lawfully obtained by the Receiving Party from a third party who, to the Receiving Party’s reasonable knowledge, is not bound by similar confidentiality obligations; or
- d. is developed by the Receiving Party completely independently of any such disclosure by the Disclosing Party.

## **Article 4 - Confidentiality**

The Receiving Party agrees that, unless the Disclosing Party gives its explicit prior written authorization, and except to the extent obliged by mandatory law, it shall:

- a. not use the Confidential Information for any other purpose than the Authorized Purpose;
- b. protect the Disclosing Party’s Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects similar Confidential information of its own;
- c. limit circulation of the Confidential Information disclosed by the Disclosing Party to such of (i) its Affiliates (as defined under 5 below), and / or (ii) the Receiving Party’s or its Affiliates’ officers, directors, employees, agents or other representatives, advisors, legal counsels, and auditors, as have a need to know only in connection with the Authorized Purpose;



- d. in case samples form part of the Confidential Information, not analyze the samples to determine the composition of samples;
- e. not measure the properties of samples except as reasonably necessary to accomplish the Authorized Purpose; and
- f. not alter, decompile, disassemble, attempt to decipher or otherwise reverse engineer any software, device or any part thereof disclosed in connection with the Authorized Purpose, nor permit others to do so.

Notwithstanding the above, the receiving Party may disclose the Confidential Information to the extent such disclosure is required by: (i) the laws or regulations applicable to it (including the rules and regulations that apply to EIT InnoEnergy in relation to funding provided by the European Institute of Innovation and Technology); or (ii) any order of any court or any competent judicial, governmental or regulatory body, or any applicable regulatory organization.

#### **Article 5 - Affiliates and Partners**

For the purpose of this Agreement, “**Affiliate**” shall in relation to the Company mean each entity which: (i) is Controlled by it; or (ii) Controls it; or (iii) is under common Control with it. For this purpose “**Control**” means that more than fifty percent (50%) of the Controlled entity’s shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the Controlling entity. An entity is considered an Affiliate only so long as such ownership or control exists.

In relation to EIT InnoEnergy “**Affiliate**” shall mean each co-location center of EIT InnoEnergy and each other legal entity Controlled by it.

The parties recognize that it may be necessary for a Receiving Party to provide Confidential Information to any of its Affiliates in connection with the Authorized Purpose. For this purpose, the parties agree that a Receiving Party may disclose Confidential Information to its Affiliates) but only to the extent that such Affiliate has a need to know for the purpose of carrying out the Authorized Purpose and provided that the Receiving Party shall procure that such Affiliates shall comply with the obligations set out in this Agreement as if those obligations applied directly to such Affiliates.

#### **Article 6 - Permitted disclosure to Third Parties**

Disclosure of Confidential Information by the Receiving Party to third parties is permitted if it concerns disclosure to third parties with written consent of the Disclosing Party, which consent shall not be unreasonably withheld or delayed.

#### **Article 7 - Ownership, Warranties, Limitation of Liability.**

All Confidential Information remains the property of the relevant Disclosing Party. The Disclosing Party provides all Confidential Information on an “as is” basis, without any warranty whatsoever,



whether express, implied or otherwise, regarding its accuracy, completeness, non-infringement of third party rights or otherwise.

THE DISCLOSING PARTY DISCLAIMS ALL IMPLIED WARRANTIES FOR ITS CONFIDENTIAL INFORMATION AND SAMPLES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY, AND ALL IMPLIED REPRESENTATIONS AND WARRANTIES PROVIDED BY LAW OR STATUTE. THE DISCLOSING PARTY SHALL NOT BE LIABLE FOR ANY DAMAGE, INCLUDING BUT NOT LIMITED TO, DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR SPECIAL DAMAGE RELATING TO THE RECEIVING PARTY'S USE OF ANY CONFIDENTIAL INFORMATION DISCLOSED BY THE DISCLOSING PARTY HEREUNDER.

#### **Article 8 - Return or destruction of Confidential Information.**

The Parties agree that, upon first request of the Disclosing Party, the Receiving Party:

- (i) shall destroy or return to the Disclosing Party all Confidential Information received in written or other tangible form, including all copies thereof and shall certify such destruction in writing within thirty (30) days; and
- (ii) will destroy all work papers or other information incorporating any Confidential Information;

unless, pursuant to mandatory law, the Receiving Party is subject to a record keeping obligation requiring it to keep part of the Confidential Information for legal, archiving and / or reference purposes. In such situations the Receiving Party shall comply with sub sections (i) and (ii) for all Confidential Information not subject to such mandatory obligation. It shall furthermore store the Confidential Information subject to such mandatory obligation in such a manner that it is only accessible to persons directly involved in complying with such mandatory obligation, sealed in an envelope or other suitable container, and made inaccessible to the other persons involved in the Receiving Party's operations.

#### **Article 9 - Applicable Law and Courts, Injunctive Relief**

This Agreement shall be governed and construed in accordance with the laws of The Netherlands without giving effect to its conflict of law provisions. The courts of Amsterdam shall have exclusive jurisdiction in respect of any dispute between the parties under this Agreement.

#### **Article 10 - Duration**

This Agreement shall be effective for a period of three years following as the last signature. Either party may terminate this Agreement within this period for any or no reason upon written notice to the other party. All rights and obligations of the parties concerning confidentiality and the use of Confidential Information under this Agreement shall survive such termination or expiration, unless (i) an exclusion mentioned in Article 3 or 4 of this Agreement applies, (ii) all Confidential Information is destroyed or returned in accordance with Article 8 of this Agreement, or the Receiving Party has



complied with Article 8 of this Agreement at its own initiative AND – in both situations - the receiving Party has confirmed in writing that it shall not make use of any non-tangible confidential information, or tangible confidential information which is subject to a record keeping obligation in accordance with the second part of Article 8 above – it has gained as a result of the receipt of Confidential Information under this Agreement.

#### **Article 11 - Communications**

Written communications with respect to this Agreement shall be addressed to the parties' respective addresses written above.

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Signed in two copies by:

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**KIC InnoEnergy SE**

By: Diego Pavia

Function: CEO

On:

Place:

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**[Full Company name]**

By: [name authorized representative]

Function: [title]

On:

Place: