

# Grant Agreement

This agreement (“**Agreement**”) is entered into on ..... < date> ..., hereinafter the “**Effective Date**”, between:

on the one hand,

1. **Eindhoven Engine B.V.** (hereinafter **EhvEng**), a company established under the laws of the Netherlands having its principal office at Horsten 1, 5612AX Eindhoven, the Netherlands, with KvK 71712283, herewith legally represented by K.K. Pahnke the Director,

on the other hand,

2. [please insert full official name], with registered address at [official address in full], [OPTION acting also on behalf of its Affiliated Companies], and,
3. [please insert full official name], with registered address at [official address in full], [OPTION acting also on behalf of its Affiliated Companies], and,
4. [please insert full official name], with registered address at [official address in full], [OPTION acting also on behalf of its Affiliated Companies], and,
5. [please insert full official name], with registered address at [official address in full], [OPTION acting also on behalf of its Affiliated Companies],

where all parties together may also be referred to as “**Parties**” and separately as “**Party**” and the Parties 2 up till and including 5 are also referred to as “**Project Partners**” or separately as “**Project Partner**”.

**have agreed as follows:**

## Article 1

Words beginning with capital letter shall have the meaning of the terms in bold defined here below or elsewhere in this Agreement or in the Terms and Conditions.

## Article 2

the Project Partners confirm to accept the Grant under the following conditions:

- The Project Partners will jointly execute the Project “**name Project**” in accordance with the Project Plan as submitted by the Parties (Exhibit 1).
- The duration of the Project will be [insert number] months as of the Project Starting Date [insert date].
- The Coordinator of the Project is .... < insert Project Partner that is Coordinator> ....
- The Grant and the execution of the Project are subject to the Terms & Conditions including its annexes (Exhibit 3).
- The percentage or amount of the eligible cost to be reimbursed by the Grant is as set out in the Budget Sheet (Exhibit 2) and subject to the Terms & Conditions.
- The Coordinator confirms that all Enablers have signed the “Enablers Statement”.
- All Pre-Payments and Final Payments will be made to the following bank account available to the Coordinator:  
[insert bank details]

**Agreed and executed by the Parties’ duly authorised representative:**

**1) For Eindhoven Engine B.V.**

[signature]

Name; K.K. Pahnke

Function: Managing Director

Date:

**For the Project Participants:**

2) [party 2]

[signature]

Name; .....

Function: .....

Date:

3) [party 3]

[signature]

Name; .....

Function: .....

Date:

4) [party 4]

[signature]

Name; .....

Function: .....

Date:

5) [party 5]

[signature]

Name; .....

Function: .....

Date:

Exhibits to the Grant Agreement

- **Project Plan (Exhibit 1)**
- **Consortium's budget sheet in specific format (Exhibit 2)**
- **General Terms & Conditions (Exhibit 3)**

## EXHIBIT 3

### GENERAL TERMS & CONDITIONS EINDHOVEN ENGINE

#### ARTICLE 1 - DEFINITIONS

Words beginning with capital letter shall have the meaning of the terms in bold defined here below or elsewhere in these terms and conditions.

**Affiliated Company** means, with respect to each of the Parties, any corporation or other legal entity that directly or indirectly Controls, is Controlled by, or is under common Control with, such Party, but only with respect to the period said Control exists.

For the above purposes, "**(to) Control**" shall mean (to have) the right to elect a majority of the members of the board of directors of another corporation and/or legal entity, or (to have) the direct or indirect ownership of more than fifty per cent (50%) of the outstanding share capital of another corporation.

**Breach** has the meaning attributed to it in Article 8.4.1.

**Budget Sheet** means the document, attached as **Exhibit 2** to the Grant Agreement, which contains the estimated eligible costs to implement the Project, broken down for each Project Partner in budget categories and describing in detail which (part of the) eligible costs are covered by the Grant.

**Confidential Information** means any proprietary and non-publicly available information exchanged between the Parties within the Project, including information concerning the progress and the results of research and development related to the Project. Such information would ordinarily be regarded and treated as confidential by the disclosing Party or would, given the nature of the information or the circumstance of its disclosure, be considered information of a confidential nature in the industry, whether or not specifically marked as such.

**Consortium** means the Project Partners and Enablers together in their capacity of partners to the Project.

**Coordinator** means the Project Partner assigned by all Project Partners with, among other things, the tasks set out in Article 7.2 B) hereof.

**Decision** the decision of EHVEng to award the Grant to the Project

**Effective Date** means the first date written above.

**EHVEng** means Eindhoven Engine

**Enabler** means a legal entity that does not conduct work under the Project, but that will provide co-funding. For the avoidance of doubt, an Enabler is not a Project Partner.

**Final Payment** has the meaning attributed to it in Article 8.1

**Force Majeure** means any situation or event that:

(i) prevents any of the Parties from fulfilling its or their obligations under the Decision or these Terms & Conditions

(ii) was unforeseeable, and beyond the reasonable control of the Party/ies affected, and



(iii) was not due to error or negligence of the Party/ies affected.

Events of Force Majeure shall include, without limitation, war, civil unrest, natural disasters, exceptional weather conditions, breakdown or general unavailability of transport facilities, accidents, fire, explosions, and general shortages of energy.

The following shall not be regarded as Force Majeure:

- any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a valid case of Force Majeure,
- labor disputes or strikes, or
- financial difficulties.

**Grant** means the total amount of funding granted by EhvEng to the Project.

**Improper termination** has the meaning attributed to it in Article 10.3.1.

**Intellectual Property Rights** or **IPR** means patents, utility models and utility certificates, industrial design rights, copyrights (including without limitation copyrights in Software), database rights, topographies of semiconductor products' rights, registered design rights, applications for registered design rights, unregistered design rights and other statutory rights in designs, as well as any registrations, applications, divisions, continuations, re-examinations, renewals or reissues of any of the foregoing, and all other intellectual property rights and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing, whether or not any of these rights is registered, and including, without limitation, applications for registration of, and rights to apply for, any such rights, which exist now or in the future in any part of the world, excluding trademarks, trade names, and, as such, Confidential Information.

**Multi Media Paviljoen** and **MMP** mean the building at the premises of TU/E with that name located at the address Horsten 1 5612 AX Eindhoven.

**Party/Parties** mean the EhvEng and the Project Partners

**Pre-Payment(s)** has the meaning attributed to it in Article 8.1.1

**Project** means a Project for which a Grant is awarded by EhvEng

**Project Consortium Agreement** (or **PCA**) means the agreement negotiated by all the Project Partners in which the Project Partners specifies with respect to the Project the relationship between the Project Partners, in particular concerning the organisation of the work in the Project, the governance between the Project Partners, the management of the Project and the rights and obligations of the Project Partners.

**Project Partner(s)** mean the parties executing the Project

**Project Plan** means the description of the Project, including, but not limited to, the various work packages and time schedule, deliverables and the related estimated costs.

**Project Starting Date** is the start date referred to in the Decision.

**Reclaim** has the meaning attributed to it in Article 8.1.2.1.

**Region** means the region Brainport Eindhoven which is formed by 21 municipalities in South-East Noord Brabant also known as the "Metropool Regio Eindhoven".

**Results** means any (tangible or intangible) result of the Project such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is

generated in the Project, as well as any rights attached to it, including Intellectual Property Rights.

**Enabler Statement** means a statement to be signed by each Enabler confirming their contribution to the Project.

**Terms & Conditions** means this present document, including the Exhibits attached hereto.

## **ARTICLE 2 —PROJECT TO BE IMPLEMENTED**

These terms and conditions set out the rights and obligations and the terms and conditions applicable to the Grant awarded by EHVEng to the Project Partners for implementing the Project.

The awarding of the Grant is subject to execution by the Project Partners of part of the Project in the Multi Media Paviljoen, subject to the provisions set out in **Exhibit 4**. EHVEng has the right to relocate the activities of the Project in MMP to another location in Eindhoven, but only on mutual consent from the Project Partners, which consent shall not unreasonably be withheld.

The grant is awarded to the Consortium for the Project.

## **ARTICLE 3 — PROJECT CONSORTIUM AGREEMENT**

The Project Partners shall enter into a Project Consortium Agreement, which governs the Project between them. The Project Consortium Agreement shall describe, among other things, the arrangement between the Project Partners regarding, but not limited to:

- a) The rights and obligations with respect to Results, providing at least the rights and obligations as in broad lines described in Article 6.5,
- b) a governance structure applying between the Project Partners,
- c) exit of one or more Project Partners from the Project at their own request,
- d) a procedure to declare a Project Partner that is in breach of its obligations under the PCA a “Defaulting Party” or similar indication,
- e) termination of a Project Partner as a Defaulting Party,
- f) the (detailed) role of the Coordinator and a project manager, employed by the Coordinator.
- g) a detailed procedure to decide on suspension of implementation, or termination, of the Project,
- h) detailed rules regarding dissemination of Results,
- i) providing complete and correct information regarding the Project to EHVEng

The Project Consortium Agreement shall not contain any provision in conflict with these terms and conditions. The PCA shall apply between all Project Partners.

The Project Consortium Agreement shall, once executed by the Project Partners, be provided to EHVEng by the Coordinator, no later than 6 weeks after the Effective Date. Cost declarations based on Article 8 will not be taken into account without an executed PCA being in place.

## **ARTICLE 4 — ELIGIBLE COSTS**

4.1 Eligible costs are those costs incurred during the implementation of the Project in connection with the Project and necessary for its implementation.

Eligible cost can be declared in accordance with the rules set out in Exhibit 1, including the applicable rules of the “*Kaderbesluit nationale EZ subsidies*” of 21 November 2008, hereinafter “Kaderbesluit”, it being understood that, in case:

- (i) the declaration method of Art. 12 Kaderbesluit is used (*integrale kostensystematiek*), the tariff per unit of the kostcenter (“kostendrager”) will be either the tariff approved by RVO or, if no such approval is available, the standard tariff of 125% of the actual direct cost of wages with no indirect cost, and
- (ii) the declaration method of Art. 13 Kaderbesluit is used (*loonkosten plus vaste-opslag-systematiek*), the percentage referred to in Art. 13.1 a) will be set by EhvEng, and
- (iii) the declaration method of Art. 14 Kaderbesluit is used (*vaste-uurtarief-systematiek*), the hourly tariff ( actual wages and indirect cost attributable thereto) will be set by EhvEng.

4.2 Eligible cost can be those as referred to in item 6 of the Blue Book of EhvEng, as is known to all Parties hereto.

4.3 Eligible cost are cost actually made, including cost of depreciation.

## **ARTICLE 5 — GRANT**

The percentage or amount of the eligible cost to be reimbursed by the Grant is as set out in the Budget Sheet and subject to the terms and conditions of these Terms & Conditions.

The Grant is subject to these Terms & Conditions, “Algemene Voorwaarden en Toetsingscriteria Projecten Regio Deal Brainport Eindhoven”, attached hereto as **Exhibit 1** and the “Aanvullende Voorwaarden Staatsteun Innovaties met Maatschappelijke impact”, attached hereto as **Exhibit 2**, as well as subject to the conditions of use of MMP by the Project Partners in accordance with the provisions of **Exhibit 4** and the Project Plan.

All amounts in the Budget Sheet and the Grant are net amounts. Each Project Partner is responsible for the possible settlement or offsetting of the VAT.

## **ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **6.1 — Rights and obligations related to implementing the action**

The Consortium must implement the Project as described in the Project Plan (to be found as Exhibit 1 to the Grant Agreement) in compliance with the provisions of these terms and conditions and all applicable EU and national laws and regulations.

### **6.2 —Third parties involved in the Project**

If a Project Partner involves a third party in the Project (such as a subcontractor) it remains solely responsible and liable towards EhvEng regarding implementation of its part of the Project. For the avoidance of any doubt an Affiliated Company will not be regarded as a third party. Subcontractors may cover only a limited part of the Project. In case a Project Partner wishes to assign more than 20% of such Project Partner’s cost to the Project, as appears from the Budget Sheet, to a third party, such assignment requires the prior written approval from EhvEng in order for such cost to be eligible.

### **6.3 — Principle Rights and obligations**

- a) In the Multi Media Paviljoen EhvEng will organise joint activities for all consortia with the aim to create synergy between these consortia. Therefore the Project Partners will carry out a part of the Project in the agreed location at MMP, as further detailed (at least within three months after the Decision) in the Project Plan and Annex 2 to Exhibit 4.
- b) In the Project a substantial participation of students’ and companies’ FTEs are involved, as set out in the Project Plan, who will typically use the facilities of the MMP, for their work in the implementation of the Project. The students/ company employees ratio is

as set out in the Budget Sheet. Any substantial deviation from this total number of FTEs or from this ratio requires the prior written approval from EhvEng.

- c) Each Project Partner shall spend the total costs indicated in the Consortium's Budget Sheet for each such Project Partner, unless and to the extent, part of these cost are not required to achieve the intended results set out for such expenses in the Project Plan.
- d) The Project Partners are responsible for the work of its group of students. In particular the Project Partners have to verify whether the group of students works on the agreed subject and periodically sends reports on its activities and results, if any. The group of students works on a best-effort basis only and are not obliged to provide any deliverable to EhvEng. The Project Partners will be supported in this respect by a student coordinator.
- e) The Project Partners shall keep material and equipment cost, which are covered by the Grant, reasonable to their objectives. The Project partners shall place such material and equipment in MMP to the extent required to carry out the tasks to be performed by the students and company employees in MMP.
- f) Each Party shall process personal data in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).
- g) Each Project Partner shall implement the Project in line with the principles of ethics and research integrity.
- h) The disclosure of Confidential Information between (only) the Project Partners shall be governed by the confidentiality provisions in the PCA.
- i) Each Party must keep confidential any Confidential Information (in any form) disclosed to it regarding the Project and/or during its implementation, until five (5) years after the Project Period set out in Article 3. The information disclosed by the Parties that would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven that such information is part of the public domain without violation of these Terms & Conditions or the PCA or disclosure to third parties takes place in view of dissemination in accordance with the relevant provisions in the PCA. The Project Partners agree that EhvEng may disclose the technical and financial reports from the Project Partners and the Consortium to Regiofonds Brainport as required in accordance with the provisions of Exhibit 1 which shall be treated by Regiofonds Brainport as Confidential Information and shall be kept confidential in accordance with the terms of the provisions 6.3 h), i) and j) hereof, it being understood, however, that each of EhvEng and Regiofonds Brainport shall be allowed to disclose such information if and only to the extent so requested or ordered by any competent court or governmental authority, provided, however, that the Project Partner who's Confidential Information is so to be disclosed is granted due advance notice of such a requirement as practicable in order to allow such party to take protective measures.
- j) The Parties shall take all reasonable steps which are necessary in order to maintain secrecy of Confidential Information.
- k) The Project Partners will make sure that (part of) the Grant does not qualify as unauthorised state aid.

#### **6.4 — Rights and obligations related to the grant administration**

- a) During implementation of the Project and thereafter, each Project Partner shall provide any information reasonably requested by EhvEng as far as required to enable EhvEng to verify eligibility of the costs, proper implementation of the Project and compliance with any other obligation under the Terms & Conditions.  
Each Project Partner shall keep information regarding the Project up to date and inform the Coordinator and EhvEng about events and circumstances likely to affect the Grant and/or the Project.
- b) During the Project and for a period of five years after the Final Payment of the Grant, each Project Partner shall keep records and other supporting documentation in order

- to prove the proper implementation of the Project and that the cost it declares are eligible.
- c) The Consortium must execute the Project in accordance with the time schedule and conditions set out in the Project Plan and the Decision.
  - d) Every three (3) months the Coordinator shall submit as a minimum a quarterly technical status update for the first time within two months after the Project Starting Date, and once per year, no later than on January 20 of each year an annual (more extensive) technical report of the Project over the period until the previous calendar year, all in English. The technical report will be reviewed by EHVEng once per year.
  - e) The annual technical report contains, as a minimum:
    - an explanation of the work carried out by the Consortium to date, and
    - an overview of the progress towards the objectives of the Project, including reference to the relevant milestones and deliverables in the Project Plan.
  - f) The financial reports contain for each Project Partner an individual financial cost statement regarding such project Partner and the third party/ies involved by it, of the cost actually made (including depreciation cost) in the reporting period concerned which must detail the eligible costs for each budget category.
  - g) The financial reports include the requests for Pre-Payment or, as the case may be, for the Final Payment, as these terms are further described and defined in Article 8.1.
  - h) Within three months after the end of the Project, the Coordinator submits to EHVEng the final report in English, which indicates the activities for which the Grant was granted, together with the application for the Final Payment by EHVEng. This report must be audited and approved in (i) an audit report from an independent accountant, or, (ii) in case a Project Partner's contribution to the Project is limited to in-cash contributions only, in a report of factual findings, in a format which complies with the protocol accountantsverklaring Regiofonds Brainport B.V., attached hereto as **Exhibit 3**. After receipt of this final audit report or, as the case may be, the report of factual findings, the amount of the Final Payment will be determined.
  - i) The Consortium needs to provide accurate, precise and complete requested information (see point a).

Findings in audits or checks carried out by or on behalf of EHVEng in the context of this Grant may lead to the rejection of ineligible costs (Art. 8.3), reduction of the grant (Art. 8.4), recovery of undue amounts (see Art. 8.4. (Reclaims)), suspension of the payments (art 8.5) or suspension of the Project implementation (see Art. 9.2) to the termination of the Project or of the participation of a Project Partner (Art 8.1).
  - j) For public bodies, any audit report required under the Terms & Conditions may be issued by an independent public officer with formal competence to audit the public body concerned (instead of by an external auditor).

## **6.5 — Rights and obligations related to Results**

- a) The Parties agree that all Results from the Project shall be owned by the Project Partner(s) in accordance with the terms and conditions of the Project Consortium Agreement made between the Project Partners, which shall always respect the provisions of Regulation EU/651/2014 and those of the Communication from the Commission of June 27, 2014, (2014/C 198/01) regarding the Framework for State Aid for research and development and innovation ("Commission Communication"), including, but not limited to, par. 2.2.2 thereof. Each Project Partner owning a Result must grant access rights to its Results to the other Project Partners for free for the implementation of the Project.
- b) In case a Consortium Party being an enterprise, wishes to acquire Results from another Party being a research organisation, this shall take place in compliance with par. 2.2.2, item 28 and 29 of the Commission Communication.
- c) Each Project Partner must examine the possibility of protecting its Results.
- d) The PCA must provide for rules regarding dissemination of Results, which cannot be in conflict with Regulation EU/651/2014/ or the Commission Communication.

- e) Any transfer of ownership of Results must respect any access rights granted to the (other) Project Partners under the PCA.
- f) Unless not reasonably possible, each Project Partner must display an acknowledgment of Regiofonds Brainport BV's and Eindhoven Engine's funding support, in any communication about Results.
- g) Each Project Partner herewith grants a fully paid-up, royalty-free, personal, non-transferrable irrevocable, non-exclusive license under any of the Results, to EhvEng for educational purposes only (not for commercial use) during the lifetime of the respective Results and or applicable IPR, subject, however to the confidentiality obligations of Article 6.3. i) and j), it being understood that if and when the PCA allows dissemination of Results by the Project Partners, EhvEng will be allowed to use these Results for educational Purposes.

## **ARTICLE 7 — PROJECT PARTNERS' ROLES AND RESPONSIBILITIES**

**7.1** Each Project Partner has full responsibility for implementing such part of the Project as is assigned to it in the Project Plan and for complying with these terms and conditions. If a Project Partner fails to implement its part of the Project, the other Project Partners will use reasonable endeavours to implement this part (without being entitled to any additional Grant for doing so other than the Grant initially intended for the failing Project Partner). However EhvEng may expressly relieve them of this obligation, which relief shall not unreasonably be withheld.

### **7.2 Internal division of roles and responsibilities**

A) The internal roles and responsibilities of the Project Partners are divided as follows:

Each Project Partner must:

- 1) keep all its relevant Project related information stored and up to date;
- 2) inform the Coordinator immediately of any events or circumstances likely to affect significantly, or delay, the implementation of the Project;
- 3) submit to the Coordinator in good time for the periodic or final reports;
  - a) individual financial statements for itself and its involved third parties and, if required, certificates on these financial statements;
  - b) the data needed for the Coordinator to draw up the technical reports;
  - c) any other documents or information required by EhvEng under the Terms & Conditions.

B) The Coordinator must:

- 1) monitor that the Project is implemented properly;
- 2) act as the intermediary for all communications between the Enablers, Project Partners and EhvEng (in particular, providing EhvEng with the information described in Article 6.4;
- 3) deliver complete and correct documents and information from the Enablers and Project Partners, that are required by EhvEng
- 4) submit the technical and financial reports to EhvEng;
- 5) ensure that all Pre-Payments by EhvEng are forwarded to the other Project Partners without undue delay;
- 6) inform EhvEng of the amounts paid to each Project Partner, when requested by EhvEng.
- 7) ensure that each Enabler signs a Statement Enablers.

C) The Project Partner that is a knowledge institute must, on behalf of the Project Partners (Art.6.3 d):

- 1) drive the activities of its group of students,
- 2) check the work of the group of students and,

on behalf of themselves, decide (together with the other possible knowledge institutes involved if any), within the boundaries to be agreed upon by the Project Partners, how to allocate part of the Grant received for the group of students' activities.

The Coordinator may delegate or subcontract its above-mentioned tasks to another Project Partner, or to a third party (including linked third parties), if agreed with the other Project Partners, it being understood that any such delegation or subcontracting shall be without prejudice the Coordinator's responsibility and liability in that role.

## **ARTICLE 8 — PAYMENTS AND PAYMENT ARRANGEMENTS**

**8.1.1** Payments of the Grant under these terms and conditions consist of (i) pre-payments each time after receipt and approval by EhvEng of the intermediate financial and technical reports ("**Pre-Payments**"), which may cover one, two, three or four calendar quarters and (ii) one final payment after finalisation of the Project and receipt and approval of the final financial and technical report, as described in Article 6.4.h ("**Final Payment**"). Financial reports for Pre-Payments, declaring cost made during one, two, three or four calendar quarters, as the case may be, can be issued to EhvEng at any time, regardless the period with regard to which cost are declared. However, the Project Partners are aware that, in accordance with Article 3.5 of the general terms and conditions, as set out in Exhibit 1, cost that are included in any financial report requesting Pre-Payments, can only be declared by EhvEng with Regiofonds Brainport B.V. in one of the following time windows: between 1 January and 15 February, between 1 April in 15 May, between 1 July and 15 August and between 1 October and 15 November. In view of this it is understood by the Parties that EhvEng will take its best effort to review and process financial reports received from the Project partners within two weeks upon receipt, before forwarding such financial reports, together with a total cost declaration by EhvEng, to Regiofonds Brainport B.V.. The final financial report and technical report must be issued within three months after the end of the Project.

**8.1.2.1** Pre-Payments will be payments of only 80% for each individual Project Partner's cost statement for the period concerned. The remaining 20% will each time be retained by EhvEng and will be paid out to the Coordinator for further distribution, after Final Payment is determined. This retained amount can be used by EhvEng for recovering possible reclaims of funding as referred to in Article 8.4.2 hereinafter a "**Reclaim**".

**8.1.2.2** However, based on Article 5.4 of the "Algemene Voorwaarden en Toetsingscriteria Projecten Regio Deal Brainport Eindhoven" (Exhibit 1) a Project Partner may request to receive a Pre-Payment of 100% of the funding for the cost declared, for a period that does not include the end of the Project. In such case the financial report must be audited and approved in an audit report from an independent accountant, in a format as attached hereto as **Exhibit 3** ("protocol accountantsverklaring Regiofonds Brainport B.V.").

**8.1.2.3** After the end of the Project the Final Payment will, per Project Partner, include the remaining 20% of the Grant to the extent not used for Reclaims from such Project Partner. In case the total amount of Reclaims from a Project Partner exceeds the 20% of the Grant attributed to the pertaining Project partner, EhvEng is entitled to withhold the remaining part of the amount of such Reclaims from the rest of the retained 20% of the total Grant amount for the entire Consortium as referred to in sub-paragraph 8.1.2.1 here above.

**8.1.2.4** For public bodies, any audit report required under these terms and conditions may be issued by an independent public officer with formal competence to audit the public body concerned (instead of by an external auditor).

### **8.2— Bank account for payments**

All Pre-Payments and Final Payments will be made to the bank account to the Coordinator.

Payments will be made to the Coordinator according to the technical and financial reports to the extent approved by EhvEng and Regiofonds Brainport BV, within 90 days from receiving the aforementioned reports, except in case and to the extent of any suspension of a payment in accordance with article 8.4). EhvEng may once extend this period of 90 days with an

additional period of maximum 30 days if so required to assess the reports for approval. The Coordinator must subsequently distribute these payments between the Project Partners in accordance with the relevant individual Project Partners' cost statements of the financial report concerned, or, if this is less, in accordance with such part of the financial report as approved by EhvEng. These payments shall be made without unjustified delay.

Payments to the Coordinator will discharge EhvEng from its payment obligation towards all Project Partners.

### **8.3—Rejection for ineligible costs**

EhvEng may reject costs included in a financial report if such cost are not eligible or are found to be outside the scope of the budget categories set out in the Budget Sheet:

In such case EhvEng will notify the Coordinator and the Project Partner and/or Enabler involved of the rejection of costs, the amounts and the reasons why (the “**Rejection Notice**”). The Project Partner and/or Enabler involved may — within 30 days of receiving the Rejection Notice notify EhvEng of its disagreement and provide the reasons for disagreement. EhvEng shall subsequently take a decision. Such decision may be challenged by the Project Partner and/or Enabler concerned through arbitration in accordance with “het Arbitragereglement” of “het Nederlandse Arbitrage Instituut”..

### **8.4—Reduction of the grant for breach of obligations**

**8.4.1** EhvEng may reduce the Grant amount, if (i) during the term of the Grant or even after the Final Payment, it appears that a Project Partner or Enabler, or a natural person who has the power to represent or take decisions on its behalf, is or was in irreparable breach of its obligations under these terms and conditions or during the award procedure, including, but not limited to, improper implementation of the action, submission of false information prior to the Decision or during the course of the Project or failure to provide the required information, each hereinafter referred to as a “**Breach**”, or (ii) if the European Commission would judge that the Grant qualifies as unauthorised state aid.

#### **8.4.2 — Calculation and procedure of the reduction**

The amount of the reduction will be determined by the damage caused by the occurrence of the Breach concerned. Before reduction of the Grant based on Breach, EhvEng will notify by a ‘pre-information letter’ the Coordinator and the Project Partner involved:

- informing it of its intention to reduce the Grant, the amount it intends to reduce and the reasons why and
- inviting the Project Partner concerned to submit observations within 30 days of receiving the pre-information letter.

If EhvEng does not receive any observations or decides to pursue reduction despite the observations it has received, it will notify confirmation of the reduction (if applicable, together with the notification of amounts due). In case a reduction of the Grant based on Article 8.4.1 is based on a decision by the European Commission that the Grant qualifies as unauthorised state aid, or, as the case may be, is determined after a Pre-Payment is made for the period in which a Breach occurred, the reduction leads to a repayment obligation for the Project Partner concerned and the amount involved will be regarded a Reclaim and can be withheld from the retained amount of 20% of the Grant, referred to in Article 8.1.

For the avoidance of any doubt, a Project Partner that never received any part of the Grant, e.g. because it only made in-kind contributions, can never be liable for any repayment obligation towards EhvEng regarding the Grant.

### **8.5 — Suspension of payments**

**8.5.1** If a Project Partner and/or Enabler has committed or is suspected of having committed a Breach, EhvEng may at any moment, in whole or in part suspend payment of the Grant.



EhvEng may also suspend payments of the Grant, or parts thereof, in case Regiofonds Brainport B.V. notifies EhvEng that it will suspend payment of the Grant, or part thereof, on the basis of the “Algemene Voorwaarden en Toetsingscriteria Projecten Regio Deal Brainport Eindhoven” (**Exhibit 1**) or the “Aanvullende Voorwaarden Staatssteun Innovaties met Maatschappelijke Impact” (**Exhibit 2**).

**8.5.2** Before suspending payments, EhvEng will notify the Coordinator:

- informing them of its intention to suspend payments and the grounds on which the suspension is based and
- inviting the Project Partner to submit observations or countering arguments within 30 days of receiving the notification

Upon receipt by EhvEng of observations or countering arguments within these 30 days, or, absent to these, after the end of the 30 day period, EhvEng will send a confirmation notification to the Project Partner concerned and the Coordinator of its decision that either the suspension continues or not.

**8.5.3** If payments are suspended for one or more Project Partners, EhvEng will make partial payment(s) for the Project Partners for whom payments of the Grant are not suspended.

The suspension will take effect as from the day the confirmation notification is sent by EhvEng

**8.5.4** During the suspension, the periodic report(s) for all reporting periods, shall not contain any individual financial statements from the Project Partner(s) concerned or its linked third parties. The Coordinator must include these financial statements in the first periodic report after the suspension is lifted or — if suspension is not lifted before the end of the Project— in the final report.

**8.5.5** If the reason for the suspension no longer applies, the suspension will be lifted. In such case EhvEng will formally notify the Coordinator and the Project Partner(s) concerned thereof.

## **ARTICLE 9 — SUSPENSION OF THE PROJECT IMPLEMENTATION**

### **9.1.1 — Suspension of the Project implementation -by the Project Partners-**

The Consortium may, in accordance with the relevant procedure set out in the PCA, decide on suspension of implementation of the Project or a part of it, in case circumstances qualifying as Force Majeure make implementation impossible or excessively difficult, but only as long as these circumstances exist.

#### **9.1.2 — Procedure**

In such case, the Coordinator must immediately notify EhvEng of the suspension decision, stating:

- the reasons why and
- if possible, the expected date of resumption.

**9.1.3** The suspension will take effect the day this notification is received by EhvEng

Once circumstances allow for implementation to resume, the Coordinator must, unless this Project in the meantime has been terminated, immediately notify EhvEng of the date on which the Project will be resumed and request an amendment of the Project Plan to extend the duration of the Project and make other changes necessary to adapt the Project Plan to the new situation.

Costs incurred during suspension of the action implementation are not eligible.

## **9.2 — Suspension of the Project implementation- by EhvEng -**

**9.2.1** EhvEng may suspend implementation of the Project or any part of it, if:

- a) a Project Partner is in Breach or
- b) in case Regiofonds Brainport BV notifies EhvEng that the Project implementation must be suspended on the basis of the Algemene Voorwaarden en Toetsingscriteria

Projecten Regio Deal Brainport Eindhoven” (**Exhibit 1**) or the “Aanvullende Voorwaarden Staatssteun Innovaties met Maatschappelijke Impact” (**Exhibit 2**).

### **9.2.2 — Procedure**

Before suspending implementation of the Project, EhvEng will notify the Coordinator:

- informing it of its intention to suspend the implementation and the reasons why and
- inviting it to submit observations or counter arguments within 30 days of receiving the notification.

Upon receipt by EhvEng of observations or countering arguments within these 30 days, or, absent to thereof, after the end of the 30 day period, EhvEng will send a confirmation notification to the Coordinator of its decision that either the suspension of the Project continues or not. The suspension will take effect five days after the date of the confirmation notification (or on a later date if so specified in the notification).

**9.2.3** If the reason for the suspension no longer applies, the suspension will be lifted, unless the Project has in the meantime been terminated. In case the suspension will be lifted, EhvEng will notify the Coordinator thereof. The Project Plan will be amended to set the date on which the Project will be resumed, extend the duration of the Project and make other changes necessary to adapt the Project Plan to the new situation.

The suspension will be lifted with effect from the resumption date set out in the amendment of the Project Plan.

**9.2.4** Costs incurred during suspension are not eligible.

**9.2.5** EhvEng is not liable towards the **Project Partners** for damages due to a suspension by EhvEng.

**9.2.6** Suspension of the Project implementation does not affect EhvEng’s right to terminate the Project or participation of a Project Partner, to reduce the Grant or recover amounts unduly paid.

## **ARTICLE 10 — TERMINATION OF THE PROJECT OR OF THE PARTICIPATION OF A PROJECT PARTNER**

### **10.1. — Termination of the Project or the participation of one or more Project Partners by EhvEng.**

**10.1.1** EhvEng may terminate the Project without being liable towards the Consortium if:

- a) the Consortium (all the Project Partners and Enablers) is in Breach of its obligations under the Terms & Conditions, including but not limited to not fulfilling the obligations in the paragraphs a), b) and c) of the art 6.3;
- b) there is a valid reason to believe that the Grant will not be spent or insufficiently used for the purpose for which the Grant was requested;
- c) there is a legitimate reason to believe that the continuity of the Consortium’s activities is not sufficiently guaranteed;
- d) implementation of the Project is prevented by Force Majeure or suspended by the Coordinator on behalf of the Project Partners (Art.9.1) and either resumption is impossible, or other necessary changes to the Project would call into question the decision awarding the Grant or breach the principle of equal treatment of the applicants;
- e) Regiofonds Brainport B.V. has decided to withdraw the grant decision taken by Stichting Brainport, either in full or in part on the basis of the “Algemene Voorwaarden en Toetsingscriteria Projecten Regio Deal Brainport Eindhoven” (**Exhibit 1**) or the “Aanvullende Voorwaarden Staatssteun Innovaties met Maatschappelijke Impact” (**Exhibit 2**) or a decision from the State of The Netherlands to stop the “Decentralisatieuitkering” to the municipality of Eindhoven or the municipality of

Eindhoven decides to stop the transfer of the Decentralisatieuitkering to Regiofonds Brainport BV;

- f) a change to Project Partner(s)'s legal, financial, technical, organisational or ownership situation substantially affects or delays or is likely to substantially affect or delay the implementation of the Project or calls into question the decision to award the Grant.

**10.1.2** EhvEng may terminate participation of a Project Partner to the Project if:

- a) the Project Partner is in Breach, that cannot be remedied, or that has not been remedied within 30 days upon written notice to that effect from EhvEng,
- b) the Project Partner is declared bankrupt, being wound up, having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, or is subject to any other similar proceedings or procedures under national law,

**10.1.3**

a) Except in case of Force Majeure, before terminating the Project, either entirely or for a Project Partner, EhvEng will notify the Coordinator and, if any, the Project Partner concerned: - informing it or them of its intention to terminate and the reasons why and - inviting it or them, within 30 days of receiving notification, to submit observations and counter arguments, and — in case of Breach of obligations under Article 10.1.1 a) to inform EhvEng of the measures to be taken within 30 days after the notification. to remedy the Breach and ensure compliance with the obligations under the Terms & Conditions.

Upon receipt by EhvEng of observations or countering arguments or upon remedy of the Breach within these 30 days, or, absent to these, after the end of the 30 day period, EhvEng will send a notification to the Coordinator and/or the Project Partner concerned of its decision to (i) either terminate the Project or, as the case may be, the participation of the Project Partner concerned to the Project, including the effective date of such termination (hereinafter the “**Termination Notice**”), or (ii) not to terminate.

b) In case of the occurrence of Force Majeure which has continued for three months, or is foreseeable to continue for at least three months, EhvEng is entitled to terminate the Project or the participation of the Project partner that is affected by the event of Force Majeure, with immediate effect through written notice to the Coordinator and, if applicable, to the Project Partner concerned.

c) A decision to terminate, based on one of the circumstances describe in Art. 10.1.1 e) and f) shall not be open to appeal or dispute resolution by any court, unless otherwise stated in the Termination Notice.

**10.1.4** The termination will take effect on the day specified in the Termination Notice.

**10.1.5 — Effects of Termination**

**10.1.5. a) of the Project**

In case of termination of the Project the Coordinator must, within 30 days from the effective date of termination submit to EhvEng:

- 1) a periodic (technical and financial) report and
- 2) a final (technical and financial) report

If, however, the Project is terminated for breach of the obligation to submit technical or financial reports, the Coordinator may not submit any further intermediate or final reports after the date of the Termination Notice.

If EhvEng does not receive the periodic and final reports from the Coordinator within 30 days after the effective date of termination, only costs included in cost statements of prior approved periodic reports will, if eligible, be open to receiving part of the Grant. However, in case the periodic and final reports were not sent to EhvEng only due to a failure by the Coordinator to prepare and forward such reports to EhvEng, the other Project Partners shall have an additional 30 days period to repair such omission by the Coordinator. It is the Project Partners' own responsibility to timely make use of this option to repair. EhvEng will calculate the amount of the Final Payment on the basis of the reports submitted in a timely manner, in accordance with the provisions of these terms and conditions. Only costs incurred until the effective date

of termination are eligible. Costs relating to contracts, that become due after the effective date of termination are not eligible.

Except for cases of intent, gross negligence or wilful misconduct, EhvEng is not liable towards the Project Partners for damages due to termination by EhvEng.

#### **10.1.5. b) of the participation of a Project Partner**

In case of termination of the participation of a Project Partner to the Project, within 30 days from the effective date of such termination the Coordinator must provide to EhvEng:

- 1) a report on the distribution of all Pre-Payments made to the Project Partner concerned until the effective date of termination;
- 2) a request for amendment of the Project Plan, with a proposal for reallocation of the tasks and estimated budget of the Project Partner concerned and, if necessary, the addition of one or more new Project Partners. If, however, the date of the Termination Notice lies after the end of the Project as follows from Article 3, no request for amendment must be submitted unless the Project Partner concerned is the Coordinator, in which case the request for amendment can only refer to the appointment of a new Coordinator, and
- 3) if termination takes effect before the end of the Project: a final financial and technical report regarding the Project Partner concerned, for the open reporting period until termination, containing an overview of the progress of the work and of the use of resources since the previous technical and financial report.

The information in the final report regarding the terminated Project Partner must also be included in the periodic technical and financial report regarding the whole Consortium for the reporting period running at the time of the Termination Notice for the Project Partner concerned.

Upon receipt by EhvEng of the final report for the terminated Project Partner, the new periodic report for the Consortium and the report on distribution of payments to the terminated Project Partner, EhvEng will calculate the amount of either the Final Payment to the terminated Project Partner or, in case of a reduction of the Grant for the terminated Project Partner (Art. 8.4.2), of a Reclaim.

### **10.2— Termination of the participation of a Project Partner**

#### **By the other Project Partners**

**10.2.1** In case the Project Partners, in accordance with the relevant provisions of the PCA, decide to terminate the participation of a Project Partner, either on request of the Project Partner concerned or after they have declared the Project Partner as a Defaulting Party, the Coordinator must notify the termination to EhvEng and to the Project Partner concerned.

**10.2.2** The notification to EhvEng must include:

- the grounds for termination;
- the opinion of the Project Partner concerned (or proof that this opinion has been requested in writing but not received);
- the date the termination takes effect, which date must be after the date of the notification, and
- a request for amendment of the Project and the Project Plan with a proposal for reallocation of the tasks and the estimated budget of the Project Partner concerned and, if necessary, the addition of one or more new Project Partners.

If termination takes effect after the Project is finished, no request for amendment must be included unless the Project Partner concerned is the Coordinator, in which case the amendment can only refer to the appointment of a new Coordinator.

**10.2.3** In view of calculation of a Final Payment to the terminated Project Partner or the Reclaim, the provisions of Article 10.1.5 b apply.

### **10.3 — Termination of the Project by Project Partners-**

**10.3.1** The Project Partners together can only terminate the Project, in case it is decided that

- a) the Project will not reach its intended end result, or
- b) there is a legitimate reason to believe that the continuity of the Consortium's activities is not sufficiently guaranteed,

The Coordinator must notify termination of the Project to EHVEng stating:

- the reasons why and
  - the date the termination will take effect. This date must be after the date of the notification.
- If no reasons are given or if none of the reasons under 10.3.1 a) or b) applies, such termination will be considered an “**improper termination**”.

The termination will take effect on the day specified in the notification.

#### **10.3.2 — Effects**

The Coordinator shall, within 30 days from when termination takes effect, submit:

- 1) a periodic report (for the open reporting period until termination) and
- 2) the final report.

If EHVEng does not receive the reports within these 30 days, only costs which are included in earlier approved periodic reports will be taken into account to determine the Final Payment.

EHVEng will calculate the Final Payment amount on the basis of the reports submitted. Only costs incurred until termination can be eligible. Costs relating to contracts that become due after the effective date of termination are not eligible.

Improper termination may lead to a claim for damages by EHVEng up to the total amount of the Grant.

### **10.4 – Surviving Provisions**

In case of termination of the participation to the Project of a Project Partner or termination of the Project, the provisions of these terms and conditions that by their nature are destined to survive termination of the Project, including, but not limited to Articles 1, 4, 5, 6.3 subsections e) f) g) h), i) and j) , 6.5), 7.2, 8.1 – 8.4, 10.1.5, 10.3.2, 10.4, 12, 14 and 15 shall so survive as long as required to serve their purpose.

### **ARTICLE 11 — FORCE MAJEURE**

Any situation constituting Force Majeure must be notified by the Party/ies affected by it to the other Party/ies without delay, stating the nature, likely duration and foreseeable effects.

If the Project Partners are affected by Force Majeure, they must immediately take all the necessary steps to limit any damage resulting from the Force Majeure and do their best to resume implementation of the Project as soon as possible.

The Party/ies affected by Force Majeure from fulfilling its obligations cannot be considered in breach of them.

### **ARTICLE 12 — LIABILITY FOR DAMAGES**

#### **12.1 Liability of EHVEng**

EHVEng's liability for any damage that may arise out of or in connection with the Project is limited to the maximum funding to be received hereunder by the Project Partners on the basis of amounts of eligible cost each respective Project Partner contributes to the Project as shown in the Budget Sheet, without prejudice, however, to liability for gross negligence and wilful misconduct , which shall not be limited. EHVEng cannot be held liable by any of the Project Partners for any damage caused by any of the other Project Partners or third parties involved in the Project as a consequence of implementing the Project.

#### **12.2 Liability of the Project Partners**

None of the Parties shall be liable to the other Parties for any punitive, incidental or consequential damages arising out of the Project even if such Party has been advised of the possibility of such damages.

The liability of each of the Project Partners to EHVEng for any direct damage that may arise out of or in connection with the Project shall be limited to the amounts each respective Project Partner contributes to the Project as shown in the Budget Sheet, unless such damage is caused by willful misconduct or gross negligence in which case liability shall not be limited, while liability for damage to the MMP building as a consequence of fire is limited to the maximum amount of the insurance coverage of the Project Partner having been found liable for having caused the damage, and liability for other damage to real property, including, but not limited to, electrical or other installations, and to moveable goods, is limited to one million Euro.

### **ARTICLE 13 — AMENDMENTS TO THE PROJECT**

The Project can only be amended through a written amendment document executed by EHVEng and all (remaining) Project Partners.

### **ARTICLE 14 — MISCELLANEOUS**

#### **14.1 Set-Off**

At all times — EHVEng shall be entitled to set-off any payments due by it to the Coordinator or to any individual Project Partner against any payment obligations by any Project Partner towards EHVEng, including, but not necessarily limited to, a Reclaim.

#### **14.2 Notices/notifications**

All “notices” and “notifications” referred to in this Agreement shall be addressed to the addresses set out for each Party on the Project Plan.

Notices shall be deemed given:

- if delivered by hand: at the time of actual delivery,
- if sent through either e-mail: upon delivery at the receiving e-mail account
- if send through ordinary mail: three days after the day of dispatch
- if send through register mail or overnight courier: at the time of delivery stated in the delivery documents.

### **ARTICLE 14 — APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

The Project and the Terms & Conditions shall be governed by the laws of the Netherlands, without giving effect to its conflict of laws provisions.

Unless explicitly otherwise provided herein, all disputes concerning the Project that the Parties are not able to settle amicably amongst them, shall be settled by the competent court in ‘s-Hertogenbosch, the Netherlands.

### **ARTICLE 16– EXHIBITS-ANNEXES -SIGNATURE AND INITIAL**

The Exhibits form integral part of the Terms & Conditions.

These are:

- **Algemene Voorwaarden en Toetsingscriteria Projecten Regio Deal Brainport Eindhoven (Exhibit 1)**
- **Aanvullende Voorwaarden Staatssteun Innovaties met Maatschappelijke Impact”(Exhibit 2)**
- **protocol accountantsverklaring Regiofonds Brainport BV (Exhibit 3)**
- **Conditions of Use MMP (Exhibit 4)**

Exhibit 1  
Algemene Voorwaarden en Toetsingscriteria Projecten Regio  
Deal Brainport Eindhoven

## **GENERAL TERMS AND CONDITIONS AND ASSESSMENT CRITERIA BRAINPORT EINDHOVEN REGION DEAL PROJECTS**

### **1. DEFINITIONS**

**1.1. Stichting Brainport.**

Stichting Brainport is a close partnership of companies, knowledge institutions, and governments in Brainport Eindhoven. Stichting Brainport is responsible for the implementation of the Brainport Eindhoven Region Deal.

**1.2. Regiofondsen Brainport BV.**

Regiofondsen Brainport BV manages the funds provided by the government in the context of the Brainport Eindhoven Region Deal.

**1.3. Government-Region Steering Committee.**

The Government-Region Steering Committee is the coordinating body between the government and the region for the implementation of the National Brainport Action Agenda and the Brainport Eindhoven Region Deal.

**1.4. Brainport Eindhoven Proposition.**

The Brainport Eindhoven Proposition for the region envelope of 8 January 2018 (hereinafter: Brainport Eindhoven Proposition) indicates the challenges to consolidating and expanding the international competitive position of Brainport Eindhoven. The Brainport Eindhoven Proposition also describes the projects that provide an answer to these challenges as they contribute to developing and realising a distinctive range of facilities, attracting and maintaining talent (at all levels of education), and innovations with a social impact.

**1.5. Brainport Eindhoven Region Deal.**

The Brainport Eindhoven Region Deal sets out the framework within which the parties endeavour to use the 130 million euros reserved by the government for Brainport Eindhoven.

**1.6. Financial contribution decision.**

The financial contribution decision indicates whether or not the applicant will receive a contribution within the framework of the Brainport Eindhoven Region Deal and the associated conditions/requirements.

### **2. FORMAL REQUIREMENTS**

**2.1.** The application in the context of the Brainport Eindhoven Region Deal must be submitted to Regiofondsen Brainport BV.

**2.2.** The application will be submitted using the Project Application Brainport Eindhoven Region Deal format.

**2.3.** A completed and duly signed application which makes clear how the project will be implemented, budgeted, and funded.

**2.4.** The annexes set out in the Brainport Eindhoven Region Deal application must be enclosed.



- 2.5. The signed co-funding statement(s) of the (co-)financiers of the project to which the application relates must be available, duly signed, and enclosed.
- 2.6. The latest final financial statements of the company must be submitted with the project application as an annex.

### 3. MISCELLANEOUS

- 3.1. The financial contribution in the context of the Brainport Eindhoven Region Deal will only be provided to a legal entity.
- 3.2. The financial contribution is capped and includes VAT which may not be eligible for settlement or compensation. The applicant is responsible for the payment, settlement, or compensation of VAT.
- 3.3. There is no case of unauthorised state aid.
- 3.4. The project is included in one of the programme themes of the Brainport Eindhoven Proposition (internationally distinctive facilities, attracting international knowledge staff and students, innovations with a social impact). The Brainport Eindhoven Proposition has been enclosed as an annex to the general terms and conditions and the Brainport Eindhoven Proposition assessment criteria.
- 3.5. Stichting Brainport reserves the right to make amendment proposals concerning the project portfolio. These amendment proposals will be assessed by the Government-Region Steering Committee.
- 3.6. The projects will be assessed based on the following criteria:
  - The degree to which the project contributes to the objectives of the Brainport Eindhoven Region Deal as set out in the Brainport Eindhoven Region Deal agreed between the government and the region on 6 July 2018;
  - The quality of the business case:
    - Content perspective (what, why, for whom, how, result);
    - Organisational perspective (governance, activities schedule);
    - Financial perspective (budget and funding of activities, degree of co-financing);
    - Continuity - content, financial, and organisational (safeguarding results and estimate, coverage and substantiation of structural operational expenses after project implementation in the context of the Brainport Eindhoven Region Deal).
- 3.7. The feasibility of the project within a determined period, which means that the starting date and end date must be able to be interpreted unambiguously.
- 3.8. Projects must start within 6 months after the financial contribution decision has been provided. If the implementation of the project does not start within 6 months, the reservation of funds will expire and a new application must be submitted.  
The Board of Regiofondsen Brainport BV may deviate from the above condition in extraordinary circumstances.
- 3.9. Regiofondsen Brainport BV will forward any applications in the context of the Brainport Eindhoven Region Deal to an independent advisory committee established for this purpose. The Board of Stichting Brainport will decide whether or not to award the contribution in the context of the Brainport Eindhoven Region Deal based on the advice of the committee.

- 3.10. The decision of Stichting Brainport will be communicated within 14 days of the decision of Stichting Brainport by means of the financial contribution decision.
- 3.11. The financial contribution decision will be communicated to the applicant as soon as possible.
- 3.12. The financial contribution decision will at least contain the following details:
  - applicant name;
  - decision on the financial contribution application;
  - conditions/requirements for accepting the application, if awarded.
- 3.13. The financial contribution decision will be signed by or on behalf of the Board of Regiofond Brainport BV.
- 3.14. The co-financing of the project must take place based on the Investment-Government-Region relationship as indicated by Stichting Brainport.
- 3.15. As a rule, the applicant will be responsible for any pre-financing of the project. In extraordinary circumstances in which the applicant is unable to provide the pre-financing, Regiofond Brainport BV may decide to finance part of the costs.
- 3.16. Project applications must have been submitted no later than 1 September 2021.
- 3.17. Projects must be completed no later than 31 December 2025.

#### 4. REPORTING

- 4.1. The project applicant must report on the substantive progress of the project to Regiofond Brainport BV at least once per year (no later than February 1st).
- 4.2. The report must be submitted using the Project Monitoring Brainport Eindhoven Region Deal format.
- 4.3. You must provide the (public version of the) recent annual accounts to Regiofond Brainport BV before July 1st.

#### 5. PAYMENTS

- 5.1. The manner in which the contribution of Brainport Eindhoven Region Deal will be paid will be set out in the financial contribution decision.
- 5.2. Regiofond Brainport BV will make payments up to 80% of the requested payment based on the project completion status and the payment request submitted by the applicant/authorised signatory.
- 5.3. The remaining amount (20%) will be paid based on the technical and financial final report and the final assessment of the entire project (refer to Article 6.1 to 6.4).
- 5.4. By way of deviation from the provisions of Article 5.2 to 5.3, Regiofond Brainport BV may, at the request of the project applicant, pay 100% of the requested amount, provided that the applicant annually after the end of each financial year provides an auditor statement in accordance with the 'auditor statement' protocol based on the project completion status and the payment requests submitted by the applicant/authorised signatory. The final assessment of the financing granted in this manner will take place after completion of the

overall project (in accordance with the end date set out in the project application) based on the technical and financial final report (refer to Article 6.1 to 6.4).

- 5.5. Claims for the preceding period can be submitted four times a year, in accordance with the following time scheme: 1 January to 15 February, 1 April to 15 May, 1 July to 15 August, and 1 October to 15 November. If the assessment is positive, a decision will be made on the payment within an average of 6 to 8 weeks after submission of the claim.
- 5.6. The applicant will receive a decision on the payment within no more than 8 weeks after submission of the claim.
- 5.7. Payment also depends on the advance paid by the government to Regiofond's Brainport BV. If the government decides to (temporarily) suspend its contribution, this may affect the payment of the contribution to your project and the corresponding financing.
- 5.8. If the annual accounts (or other circumstances) indicate that the continuity of your organisation is not guaranteed or there are substantial grounds to doubt the viability of the organisation, this may affect the continued payment of contributions. Regiofond's Brainport BV may decide to suspend and/or terminate the payments if this is the case.

## 6. ASSESSMENT

- 6.1. The applicant must submit a final assessment request to Regiofond's Brainport BV using the format for the technical and financial final report no later than 3 months after the completion of the project (in accordance with the end date in the project application).
- 6.2. The applicant must submit the final assessment request with a technical and financial final report.
- 6.3. When submitting the assessment request, the applicant/authorised signatory must demonstrate that:
  - the activities for which the contribution in the context of the Brainport Eindhoven Region Deal has been provided, have been carried out;
  - the obligations imposed on the contribution have been met.
- 6.4. Projects that receive a contribution in the context of the Brainport Eindhoven Region Deal must submit a(n) (positive) audit statement by an independent auditor for the final assessment of the contribution with respect to the out-of pocket costs and co-financing in cash. For the in-kind contribution a Board statement which declares that the provided contributions have been used to realise the project in question is sufficient. The above must take place in accordance with the auditor statement protocol drawn up by Regiofond's Brainport BV.

In case of partial-applications, the (positive) audit statement and Board statement must be drawn up for the entire project.
- 6.5. The final overall contribution in the context of the Brainport Eindhoven Region Deal will never exceed the original reserved amount. The contribution will be reduced pro rata if the costs are lower.

## 7. GROUNDS FOR REFUSAL

The contribution in the context of the Brainport Eindhoven Region Deal can be refused, if:

- 7.1. accepting the application would be in violation of mandatory statutory provisions, such as but not limited to the provisions of European state aid legislation;
- 7.2. there is a valid reason to assume that the funds will not, or insufficiently, be used for the purpose for which the contribution was requested;
- 7.3. there is a valid reason to assume that the continuity of the activities of the applicant is insufficiently safeguarded (last annual report and audit statement must be enclosed);
- 7.4. the application in the context of the Brainport Eindhoven Region Deal is not in line with the framework of the Brainport Eindhoven Proposition on other grounds;
- 7.5. the application does not comply with these general terms and conditions.

## 8. CO-FINANCING CONDITIONS

- 8.1. The co-financing of the application may consist of existing, already invested and/or committed funds.
- 8.2. The co-financing of the project must take place based on the Investment-State-Region relationship as indicated by Stichting Brainport (which serves as a minimum requirement for co-financing; a greater ratio is possible).
- 8.3. There must be sufficient assurance during the project that the overall state-region ratio will be achieved in the end.
- 8.4. The co-financing must relate directly to the project for which the state contribution is awarded.
- 8.5. The co-financing must consist of expenses that have been actually incurred and paid.
- 8.6. The state contribution and co-financing ratio must be substantiated during both the preparatory phases (by means of a signed commitment) and after the completion the incurred expenses).
- 8.7. The co-financing may be forwarded to the (sub-)project applicant as a condition (e.g. in case of framework projects/tenders).
- 8.8. In case of the co-financing conditions are forwarded to the ultimate project purchaser (in case of framework projects/tenders), this will be sufficient substantiation for the project-determination and project-preparation phases because of the nature of these projects.
- 8.9. The co-financing can consist of both in kind and in cash contributions.
- 8.10. If case of an in kind contribution, a time sheet with formal approval of an authorised signatory is sufficient substantiation.
- 8.11. The co-financing does not need to be provided by the project applicant itself, but may also be provided by third parties.
- 8.12. The co-financing must be within reasonable standards, which means that it must be in line with market rates.
- 8.13. Cost price x 1.25 will be used as a guideline for financing in kind.  
Regiofonds Brainport BV may approve certain costs components as attributable costs if insight has been provided into the cost structure if the actual overhead remains below the range of 25% after deduction of identifiable attributable costs. Regiofonds Brainport BV

- offers the possibility of using a cost calculation method which has been approved as part of an European or Ministerial grant scheme, such at the discretion of Regiofond's Brainport BV.
- 8.14. Projects will be concluded with a positive auditor statement for cash contributions and a Board statement for in kind contributions. It must be plausible to the auditor that the co-financing contribution is actually made.
  - 8.15. If no co-financing accountability has been given, Regiofond's Brainport BV has the right to revoke (recover) the entire financial contribution awarded as part of the Brainport Eindhoven Region Deal.
  - 8.16. Regiofond's Brainport BV has the power to decide whether or not something may be reasonably accepted as co-financing for the project in question.

## **CONCLUSION**

Regiofond's Brainport BV may amend the general terms and conditions based on decisions made by Stichting Brainport and after consultation with the project applicants who already receive funding, or if a change in the laws of the Netherlands, European legislation, or changes by the government that affect the Region Deal requires this adjustment with immediate effect. The general terms and conditions of Regiofond's Brainport BV are adopted by Stichting Brainport.

In specific cases not arranged for in these general terms and conditions, Regiofond's Brainport BV and the applicant will consult in good faith and strive to find a solution which is acceptable to both parties. If the parties fail to reach an agreement, each of them will appoint one advisor, after which these advisers will jointly appoint a third advisor who will act as chairman. The advisers will be instructed to take a decision which will be binding on both parties, in which context the opinion of the chairman will be decisive if the advisers appointed by the parties fail to come to a shared decision by majority vote.

These General Terms and Conditions are governed by the laws of the Netherlands.

In case of any conflict between the original Dutch version of these General Terms and Conditions and any translation in any other language, the original Dutch version will prevail.

Exhibit 2

Aanvullende Voorwaarden Staatssteun Innovaties met Maatschappelijke Impact

# Additional conditions for government aid for innovations with a social impact

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## Contents

Text of the conditions.....	1
Considerations.....	1
Decision Regiofondos Brainport BV.....	2
Article 1 Definitions.....	2
Article 2 Applicability of General Terms and Conditions.....	3
Article 3 Grounds for refusal.....	3
Article 4 Target company, scope, and laws and regulations.....	3
Article 5 The Project Plan.....	3
Article 6 Requirements.....	4
Article 7 Maximum financial contribution from the Region Deal per project or company.....	5
Article 8 Costs that are eligible for financing from the Region Deal.....	5
Article 9 Report.....	5
Article 10 Effective date.....	5
Article 11 Reference title.....	<b>Fout! Bladwijzer niet gedefinieerd.</b>

## Text of the conditions

### Considerations

1. On 19 January 2018, Stichting Brainport offered a “Brainport Eindhoven Proposition for Region-Envelope” (hereinafter: Proposition) to the government to promote the economic international position of the Brainport region. This Proposition lists the projects that are eligible for financing. These projects can be distinguished based on 3 themes: 1) distinctive facilities, 2) attracting and maintaining talent, and 3) innovations with a social impact.
2. This Proposition has been developed into the Brainport Eindhoven Region Deal (hereinafter: Region Deal). This Region Deal consists of two agreements:
  - a management agreement between the government and the Municipality of Eindhoven;
  - an agreement between the government, as one party, and Stichting Brainport and Brainport Development N.V., as the other party.
3. The management agreement contains agreements on the transfer of funds to the Municipality of Eindhoven as a decentralisation payment. The municipality will forward this

- contribution to Regiofond's Brainport BV as a grant. The substantive acceptance of project application is the sole responsibility of Regiofond's Brainport BV (Stichting Brainport);
4. Based on a decision of 27 September 2018, the Board has provided a grant to Regiofond's Brainport BV for the implementation of the Region Deal.
  5. Regiofond's Brainport BV has drawn up General Terms and Conditions and Assessment Criteria Brainport Eindhoven Region Deal projects (V7-181210) for the implementation of the Region Deal.
  6. These General Terms and Conditions stipulate that payments by Regiofond's Brainport BV must comply with rules on state aid.
  7. One of the pillars of the Region Deal is "Innovations with a Social Impact".
  8. This pillar covers a broad scope of activities that are eligible for financing by Regiofond's Brainport BV. The contribution by Regiofond's Brainport BV can be used to finance various separate projects (within the framework and agreements related to the Region Deal).
  9. Regiofond's Brainport BV believes that, for the best possible realisation of the goals of the Proposition, that the financing of these projects, where state aid<sup>1</sup> is provided, must comply with:
    - the Regulation (EU) No. 651/2014 of the Commission of 17 June 2014 in which certain categories of aid are declared compatible with the internal market pursuant to Articles 107 and 108 of the Treaty, OJ L 187/1 of 26 June 2014;
    - the Regulation (EC) No. 1407/2013 of the Commission of 18 December 2013 concerning the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union for de minimis aid, OJ L 352/1 of 24 December 2013;

## **Decision Regiofond's Brainport BV**

Regiofond's Brainport BV decides to adopt the following Supplementary Conditions on Innovations with a Social Impact:

### **Article 1 Definitions**

These Conditions use the following definitions:

- General Group Exemption Regulation: Regulation (EU) No. 651/2014 of the Committee of 17 June 2014 in which certain categories of aid are declared compatible with the internal market pursuant to Articles 107 and 108 of the Treaty, OJ L 187/1 of 26 June 2014;
- General Terms and Conditions: the conditions adopted by Regiofond's Brainport BV used to determine the eligibility for a contribution from Regiofond's Brainport BV;
- Board: the Board of Mayor and Aldermen of the Municipality of Eindhoven;
- De Minimis Regulation: aid based on Regulation (EC) No. 1407/2013 of the Committee of 18 December 2013 concerning the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union for de minimis aid, OJ L 352/1 of 24 December 2013;
- The Region Deal: Brainport Eindhoven Region Deal, the covenant and agreements on the implementation of the region envelope between the Brainport Region and the Ministries;

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<sup>1</sup> Article 107(1) of the Treaty on the Functioning of the European Union



- Ministries: The Ministry of Agriculture, Nature and Food Quality, the Ministry of Economic Affairs, and the Ministry of Domestic Affairs;
- Supplementary Conditions: these Supplementary Conditions on Innovations with a Social Impact;
- Project: projects as referred to in Article 4 of these Supplementary Conditions that are financed using public funds;
- Project Plan: the project plan as referred to in Article 5 of these Supplementary Conditions;

## **Article 2 Applicability of General Terms and Conditions**

1. The General Terms and Conditions will remain in full force and effect. In case of conflicts between the General Terms and Conditions and these Supplementary Conditions, the General Terms and Conditions will prevail.
2. In case of ambiguities or differences in interpretation between these General Terms and Conditions and the Supplementary Conditions, Regiofonds Brainport BV will have the sole authority to express the correct interpretation.

## **Article 3 Grounds for refusal**

1. Without prejudice to the provisions of the General Terms and Conditions, a financial contribution from the Region Deal will always be refused and/or recovered, if:
  - a) the financial contribution does not have a beneficial impact as referred to in Article 6 of the General Group Exemption Regulation;
  - b) the applicant or the company which carries out the Project experiences financial difficulties at the time the financial contribution is awarded, as referred to in the Guidelines for recovery and restructuring aid to non-financial companies in difficulties (2014/C249/01);
  - c) the project application does not meet the conditions set out in the General Group Exemption Regulation or the De Minimis Regulation;
  - d) the application or the company which carries out the Project violates the General Terms and Conditions, generally accepted legal principles, or laws or regulations in any way;
  - e) a recovery order has been levied vis-à-vis the project applicant based on a (previous) decision of the European Commission in which the aid was declared unlawful and incompatible with the common market.

## **Article 4 Target company, scope, and laws and regulations**

1. A financial contribution from the Region Deal will exclusively be granted to the parties designated by Regiofonds Brainport BV. This party must ensure that the individual Projects it finances using public funds comply with laws and regulations (including European and national laws and regulations on government aid), the General Terms and Conditions, and these Supplementary Conditions.

## **Article 5 The Project Plan**

1. The Project must be based on the following:
  - a) a Project Plan which at least sets out how the requirements of these Supplementary Conditions are met, including requirements related to state aid legislation;
  - b) a budget and business case for the Project.

2. Before the project applicant can actually implement a Project, he must submit the Project Plan to Regiofonds Brainport BV for approval. This is required because Regiofonds Brainport BV considers it useful to assess the business case in the context of government aid before the implementation of the Project starts.

### Article 6 Requirements

1. Without prejudice to the provisions of the General Terms and Conditions, the following requirements must be complied with:
  - a) the Project must be carried out in the Brainport Region;
  - b) the Project revolves around making the best possible use of innovative potential;
  - c) the Project complies with all of the following criteria:
    - the Project contributes to the goals of the Region Deal;
    - the Project has one or more innovative aspects;
    - the business case of the Project has been substantiated, taking into account the nature of the intended innovation;
    - the Project Plan is of sufficient substantive, financial, and legal quality;
    - the Project contributes to sustainable development.
2. Without prejudice to the provisions of the first paragraph, one of the following requirements must be met to qualify for a financial contribution from the Region Deal in case the funding qualifies as state aid:
  - a) the Project revolves around obtaining consultancy services and the applicant is an SME, as referred to in Article 18 of the General Group Exemption Regulation;
  - b) the Project revolves around participating at fairs and the applicant is an SME, as referred to in Article 19 of the General Group Exemption Regulation;
  - c) the Project revolves around starting enterprises as referred to in Article 22 of the General Group Exemption Regulation;
  - d) the Project is mainly focussed on industrial research, experimental development, or feasibility studies as referred to in Article 25(2) of the General Group Exemption Regulation;
  - e) the Project revolves around building or upgrading research infrastructure as referred to in Article 26 of the General Group Exemption Regulation;
  - f) the Project revolves around building, upgrading, or the operation of innovation clusters as referred to in Article 27 of the General Group Exemption Regulation;
  - g) the Project revolves around innovation and the applicant is an SME, as referred to in Article 28 of the General Group Exemption Regulation;
  - h) the Project revolves around process or organisation innovation as referred to in Article 29 of the General Group Exemption Regulation;
  - i) the Project revolves around training as referred to in Article 31 of the General Group Exemption Regulation.
3. Without prejudice to the provisions of the first paragraph, in case of state aid where the Project does not meet one of the requirements set out in the second paragraph a financial contribution from the Region Deal will only be granted if the conditions set out in the De Minimis Regulation are met.

#### **Article 7 Maximum financial contribution from the Region Deal per project or company**

1. In case of state aid, the total amount of the financial contribution per Project or company will not exceed:
  - a) the amount allowed pursuant to the exemptions set out in Article 4(2) of the General Group Exemption Regulation, or
  - b) the amount allowed pursuant to the De Minimis Regulation.

#### **Article 8 Costs that are eligible for financing from the Region Deal**

1. If a case of state aid, the costs that are eligible for a contribution from the Region Deal will qualify for financing insofar as these costs are in line with the relevant provision of the General Group Exemption Regulation, including increases, if any (eligible costs as referred to in the General Group Exemption Regulation).

#### **Article 9 Report**

1. Companies that are eligible for financing from the Region Deal are obliged to cooperate with providing information about the Project. They must enable Regiofonds Brainport BV to comply with its reporting obligations vis-à-vis the relevant authorities upon request and at all times.

#### **Article 10 Effective date**

1. These Conditions take effect from the day after the adoption by Regiofonds Brainport BV.
2. Regiofonds Brainport BV may amend these Supplementary Conditions. This will only be possible in consultation with the project applicants who have already been awarded financing and after adoption by the Board of Stichting Brainport, or if a change in the laws of the Netherlands, European legislation, or changes by the government that affect the Region Deal, demand this adjustment with immediate effect.

#### **Article 11 Reference title**

1. These Conditions will be cited as: Supplementary Conditions for Innovations with a Social Impact;

Adopted by Regiofonds Brainport BV on 10-12-2018

These Supplementary Conditions are governed by the laws of the Netherlands.

In case of any conflict between the original Dutch version of these Supplementary Conditions and any translation in any other language, the original Dutch version will prevail.

Exhibit 3

protocol accountantsverklaring Regiofonds Brainport BV

## Audit protocol Regiofonds Brainport BV

### §1. General

Pursuant to the 'Financial contribution decision in the context of Brainport Eindhoven Region Deal' and the associated 'General Terms and Conditions and assessment criteria Brainport Region Deal projects', a final assessment contribution must be submitted to Regiofonds Brainport B.V. based on the technical and financial final report format. This serves to demonstrate that:

- The activities for which the contribution in the context of the Brainport Eindhoven Region Deal has been provided, have been carried out;
- The obligations imposed on the contribution have been met.

Additionally, projects that receive a financial contribution in the context of the Brainport Eindhoven Region Deal must also submit an audit statement and a report of factual findings drawn up by an independent auditor for the final establishment of this contribution. If an application for an interim sub declaration is requested (refer to Article 5.4 of the General Terms and Conditions), an audit statement and report of factual findings drawn up by an independent auditor must be submitted for the year in question.

The audit statement must be issued in order to allow Regiofonds Brainport BV to determine the reliability of the use of the financial contribution granted by the fund and the co-funding in cash. The report of factual findings is used to assess whether the co-financing in kind has actually taken place.

This protocol uses the following definitions:

- Applicant: A legal entity which has been awarded a financial contribution by Regiofonds Brainport BV in the context of the Brainport Eindhoven Region Deal;
- Auditor: An auditor within the meaning of Article 393(1), Book 2 of the Dutch Civil Code, who has been commissioned by the applicant to audit the financial report.
- Financial contribution by Regiofonds Brainport BV: Funds from the Brainport Eindhoven Region Deal State Contribution as set out in the financial contribution decision.
- Co-financing: (Financial) resources contributed to the project by the 'Brainport Region', not being the Brainport Eindhoven Region Deal Government Contribution funds. This contribution can take place both in cash and in kind.
- Contribution in cash: Value contribution in cash of other fixed assets such as land or property (objective valuations).
- Contribution in kind: Value contribution in other forms, such as hours of work or equipment use at an hourly rate equal to the cost price, including any surcharges for overhead (no more than 25% refer to Article 8.13 of the General Terms and Conditions). For 'in kind' hourly tariff and/or hourly tariff for use of employees Regiofonds Brainport BV use as a guideline the actual hourly tariff (incl. Employers' social charges) of the pertaining employees plus maximum 25%. With cost for use of employees we mean the cost charged for the use of own employees or employees of projects partners that are paid from the project means/funds. Regiofonds Brainport BV may approve certain costs components as attributable costs if insight has been provided into the cost structure if the actual overhead remains below the range of 25% after deduction of identifiable attributable costs. Regiofonds Brainport BV offers the possibility of using a cost calculation method which has been approved as part of an European or Ministerial grant scheme, such at the discretion of the Regiofonds.
- Total project costs: Financial contribution by Regiofonds Brainport BV + Co-financing by the 'Brainport Region'.
- Board statement: A signed, written statement by the Board which declares that the overall project costs were incurred and used for the purpose for which the project application was submitted.

## §2. Goal

This audit protocol serves to give instructions to the auditor responsible for auditing the substantiation used for the final assessment, or the interim sub declaration of the financial contribution granted by Regiofonds Brainport BV. This protocol provides clarity on the desired scope and depth of the audit to be carried out by the auditor of the applicant and the corresponding audit statement for the final assessment or the interim settlement. Regiofonds Brainport BV aims to avoid discrepancies between the wishes and expectations of the fund, on the one hand, and the actual performance of the audit by the auditor, on the other hand.

## §3. Assessment Criteria

The assessment criteria for the audit consists of applicable laws and regulations for auditors and other conditions imposed by Regiofonds Brainport BV as set out in the Financial Contribution Decision and the General Terms and Conditions and Assessment Criteria for Brainport Eindhoven Region Deal projects.

## §4. Subject of the audit

The subject of the audit is financial substantiation for the granted financial contribution in the context of the Brainport Eindhoven Region Deal as well as the associated co-financing provided by the Brainport Region.

## §5. Permitted tolerances

The following tolerances have been defined for the content of the audit statement regarding the substantiation of the declaration (approved, with restrictions, no opinion, or rejected):

	Scope of audit statement:			
	approved	with restrictions	no opinion	rejected
Approval tolerance				
Errors in the substantiation	≤ 1%	>1%	-	≥ 3%
Uncertainties in the audit	≤ 3%	>3%	≥ 10%	-

These percentages are compared to the incurred total project costs.

## §6. Desired degree of certainty

A distinction is made between the costs incurred in cash and the costs incurred in kind.

Concerning the costs incurred in kind (Region deal funds in cash + co-financing in cash):

The audit will provide a reasonable degree of certainty to the user of the statement. Based on the audit guidelines, this means that the auditor provides a (relatively) high, but not an absolute, degree of certainty. If this definition must be qualified for the use of statistical methodologies, a certainty of 95% must be used.

#### Concerning the costs incurred in kind (co-financing in kind):

The Board will draw up a Board statement in which it declares that the costs incurred in kind have actually been incurred for the benefit of the project. The Board is responsible in this respect for providing adequate substantiation and keeping the records. The auditor will study the Board statement and the substantiation, and report his findings to the Board. The Board will submit the Board statement, including the report of factual findings drawn up by the auditor, to Regiofond's Brainport BV.

The degree of certainty about the (total) project costs, as desired by Regiofond's Brainport BV, will be obtained by a combination of:

- 1) The auditor statement with audit certainty concerning the costs incurred in cash (Region deal funds in cash + co-financing in cash)
- 2) Board statement concerning the costs incurred in kind, including the report of factual findings drawn up by the auditor. (co-financing in kind)
- 3) Assessment of the information listed in 1 and 2 by Regiofond's Brainport BV. (total project costs)

#### **§7. Purpose of this audit protocol**

This audit protocol serves to define the scope and purpose of the audit . It does not intend to prescribe the audit method.

After all, the auditor will often base his audit on a (risk) analysis of the administrative organisation and internal check of the organisation in question, and determine the best possible use of audit methods accordingly.

#### **§8. Relationship with NBA professional regulations**

Regiofond's Brainport BV assumes that the auditor will observe the professional regulations adopted by the Dutch Association of Accountants (NBA) during his work.

#### **§9. General audit statement and report of factual findings**

The auditor will capture the result of the audit in an audit statement (for the costs incurred in cash) and a report of factual findings (for the costs incurred in kind).

The auditor will work in accordance with the most current version of the audit statement and report of factual findings found on the website of the Dutch Association of Accountants (NBA).

#### **§10. Specific discoveries**

In addition to his opinion on the financial substantiation, the auditor will drawn up an explanatory paragraph to list any specific findings he considers of interest to Regiofond's Brainport BV in the context of its assessment of the total project costs.

### **§11. Miscellaneous**

Regiofonds Brainport BV may appoint an official/auditor with the power to review the work performed by the auditor assigned by the applicant. The applicant will ensure that his auditor accepts this.

### **§12. Hardship clause**

Regiofonds Brainport BV will decide in all cases not arranged this audit protocol.

These General Terms and Conditions are governed by the laws of the Netherlands.

In case of any conflict between the original Dutch version of this Audit Protocol and any translation in any other language, the original Dutch version will prevail.



Exhibit 4  
Conditions of Use MMP

## Exhibit 4

### Conditions of Use

The Project Partners shall carry out part of the Project in the facilities at the MMP building made available by EHVEng for the Project and use the spaces indicated at the map of the MMP Building attached hereto as **Annex 1**, hereinafter the “**MMP facilities**”. For the use of the MMP facilities certain rules and conditions apply, which are set out here below:

- 1) The MMP facilities shall be used by the Project Partners as described in **Annex 2** to this Exhibit. The Project Partners confirm that they are aware that the MMP facilities are intended for research, development and innovation projects and the Project Partners are not permitted to use the MMP facilities for any other purposes.
- 2) EHVEng will provide, free of charge:
  - energy (sufficient for an office environment);
  - water;
  - other utilities, such as toilets etcetera;
  - open and flex facilities;
  - clean corridors and toilets;
  - building insurance;
  - area surveillance;
  - maintenance of lawns, plants and trees;
  - general management costs of the Leased Property.
- 3) Any specific laboratory or other equipment or materials placed in the MMP facilities by Project Partners is not included in coverage by the insurance of EHVEng. EHVEng. is not liable for damage to such equipment and materials.
- 4) In addition, the following provisions of the “GENERAL TERMS AND CONDITIONS LEASE AGREEMENT FOR OFFICE PREMISES and other business premises” in the meaning of Section 7:230a Civil Code’, filed with the court registry of the District Court at The Hague on 17 February 2015 and registered there under number 15/21, hereinafter referred to as the ‘General Terms and Conditions’, which is known to all Parties, shall apply to the use by the Project Partners of the MMP facilities, where “Lessee”, “Leased Property”, “the Lease” en “Lessor”, respectively are to be read as “Project Partners”, “the MMP facilities”, “this Exhibit 6 and where applicable the (Grant)Agreement”, and “EHVEng” or, in case of obligations of a Lessor in such capacity, “the Lessor who rents the MMP facilities to EHVEng”:
  - Art. 3,
  - Art. 5.1, 1<sup>st</sup> sentence,
  - Art. 5.2, 5.3 and 5.4,
  - Art. 6.1,
  - Art. Art. 7, 8, 9, 11, 12, 13, 14, 16,
  - Art. 22 except 22.10,
  - Art. 25, 30, 31 and 33.

- 5) Project Partners are liable towards EHVEng for damage caused by them or anyone under their responsibility to the MMP facilities through use of the MMP facilities, and to any real property in the MMP facilities that is not owned by them and they are obliged to insure themselves against any such damage.
- 6) The right to use the MMP facilities terminates at either (i) the end of the Project, or (ii) at termination or expiration of this Grant Agreement, or (iii) when Regiofonds Brainport lawfully terminates its funding, whichever comes first. In the latter case EHVEng shall give the Coordinator of the Project an (at least) one month' prior written notice.  
At the end of the right to use the MMP Facilities, the Project Partners shall have left the MMP facilities with all their employees and other persons under their responsibility and with all materials and goods that are their property.
- 7) Furthermore, these conditions of use are subject to the provisions of Titel 13 of Boek 7A of the Dutch Civil Code (Bruikleen), to the extent these provisions are not in conflict with the provisions of this Exhibit 6 or the Grant Agreement.
- 8) Regarding all matters related to the use of the MMP facilities by the Project Partners they need to contact:  
Contact name : Mrs. K.K. Pahnke  
E-mail : k.k.pahnke@yue.nl  
Telephone : 0031 6 5188 6400

## **Annex 1**

Map MMP facilities

## **Annex 2**

### Description of use of MMP Facilities