

## GENERAL TERMS AND CONDITIONS

June 2018

The Contract shall be governed by the following General Terms and Conditions, together with its incorporated attachments or annexes, if any. Any departure from these General Terms and Conditions shall only be valid if mutually agreed between the Parties in writing.

### 1. DEFINITIONS

In these General Terms and Conditions the following definitions shall apply:

'**Action**' means action as defined under Annex I of the Contract;

'**Auditor**' means auditor appointed by RCC Secretariat;

'**Beneficiary**' means a legal person, other than the RCC Secretariat, who is party to the Contract;

'**Contract**' means the Grant Contract concluded between the RCC Secretariat and Beneficiary, including all annexes thereto;

'**Parties**' means the Beneficiary and the RCC Secretariat, collectively, and 'Party' means either one of the two;

'**RCC Secretariat**' means the Regional Cooperation Council Secretariat represented by the authorised representative.

### 2. GRANT AMOUNT

The maximum grant amount is specified in the Contract.

### 3. OBLIGATIONS OF THE BENEFICIARY

The Beneficiary shall:

a) Carry out the Action jointly and severally *vis-a-vis* the RCC Secretariat taking all necessary and reasonable measures to ensure that the Action is carried out in accordance with the description of the Action in Annex I and the terms and conditions of the Contract. To this purpose, the Beneficiary shall implement the Action with the requisite care, efficiency, transparency and diligence, in line with the principle of sound financial management and with the best practices in the field.

- b) Be responsible for complying with any obligation incumbent on them from the Contract jointly or individually;
- c) Be responsible for drawing up the reports, financial statements and other information or documents required by the Contract and the Annexes thereto, as well as any information needed in the event of audits, checks, monitoring or evaluations, etc.;
- d) Be responsible for supplying all documents and information to the RCC Secretariat which may be required under the Contract, in particular in relation to the narrative reports and the requests for payment.
- e) Inform the RCC Secretariat of any event likely to affect or delay the implementation of the Action;
- f) Inform the RCC Secretariat of any change in the legal, financial, technical, organisational or ownership situation of Beneficiary, as well as of any change in the name, address or legal representative of the Beneficiary;
- g) Be responsible in the event of audits, checks, monitoring or evaluations, for providing all the necessary documents, including the accounts of the Beneficiary, copies of the most relevant supporting documents, etc.
- h) Have full financial responsibility for ensuring that the Action is implemented in accordance with this Contract;
- i) Establish the payment requests in accordance with the Contract;
- j) Not delegate any, or part of, these tasks to the other entities.
- k) Respect the RCC "Guide for the drafting of RCC documents", with annexes and the text of the footnote.

For the grants which exceed EUR 100,000 and where payment option, as in the Contract, foresees first instalment pre-financing, the Beneficiary shall provide RCC with a financial guarantee for the amount of the first instalment pre-financing.

The guarantee shall be denominated in EUR, provided by an approved bank or financial institution and remain in

force until its release by the RCC, when the payment of the balance is made.

#### **4. CONFLICT OF INTEREST**

The Beneficiary shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of this Contract. Such conflict of interests may arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.

Any conflict of interests that may arise during performance of this Contract must be notified in writing to the RCC Secretariat without delay.

The RCC Secretariat reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken if necessary.

The Beneficiary shall ensure that their staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under this Contract, the Beneficiary shall replace, immediately and without compensation from the RCC Secretariat, any member of its staff in such a situation.

The Beneficiary shall respect human rights and applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards.

#### **5. ELIGIBLE AND INELIGIBLE COSTS**

Eligible costs are actual costs incurred by the Beneficiary which meet all the following criteria:

- a) They are incurred during the implementation of the Action in Annex I. In particular:
  - i) Costs relating to services and works shall relate to activities performed during the implementation period. Costs relating to supplies shall relate to delivery and installation of items during the implementation period. Signature of a contract, placing of an order, or entering into any commitment for expenditure within the implementation period for future delivery of services, works or supplies after expiry of the

implementation period do not meet this requirement.

- ii) Costs incurred should be paid before the submission of the final reports. They may be paid afterwards, provided they are listed in the final report together with the estimated date of payment.
- iii) An exception is made for costs relating to final reports, including expenditure verification, audit and final evaluation of the Action, which may be incurred after the implementation period of the Action;
  - b) They are indicated in the estimated overall budget for the Action;
  - c) Costs of consumables and supplies directly attributable to the Action;
  - d) Expenditure on contracting directly attributable to the Action;
  - e) They are identifiable and verifiable, in particular being recorded in the accounting records of the Beneficiary and determined according to the international accounting standards;
  - f) They comply with the requirements of applicable tax and social legislation;
  - g) They are reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

Eligible costs may also be constituted by any or a combination of the following simplified cost options:

- a) Unit costs;
- b) Lump sums;
- c) Flat-rate financing.

The methods used by Beneficiary to determine unit costs, lump sums or flat-rates shall be clearly described and substantiated in Annex 1 and shall ensure compliance with the non-profit rule and shall avoid double funding of costs. The information used can be based on the Beneficiary's historical and/or actual accounting and cost accounting data or on external information where available and appropriate.

Costs declared under simplified cost options shall satisfy the eligibility criteria set above. They do not need to be backed by accounting or supporting documents, save those

necessary to demonstrate the fulfilment of the conditions for disbursement established.

In addition to this, the following costs are considered as un-eligible costs:

- a) Debts and debt service charges (interest);
- b) Bank charges and bank interests;
- c) Provisions for losses or potential future liabilities;
- d) Costs declared by the Beneficiary and financed by another action or work programme;
- e) Purchases of land or buildings, except where necessary for the direct implementation of the Action and according to the conditions specified in the Contract; in all cases the transfer of ownership shall be agreed with the RCC Secretariat;
- f) Currency exchange losses;
- g) Credits to third parties, unless otherwise specified in the Contract;
- h) Salary costs of the personnel of national administrations, unless otherwise specified in the Contract and only to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the Action were not undertaken.

#### ***Verification by the auditor***

The RCC will, as a rule, appoint an external auditor to conduct the expenditure verification of the grant in case of a grant exceeding EUR 100,000. The expenditure verification is to be conducted in accordance with International Standards on Related Services 4400, as promulgated by International Federation of Accountants.

RCC may, at its discretion and/or at the request of the external auditor, who verifies RCC accounts, decide to audit Beneficiary's accounts for a grant lower than EUR 100,000 with 30-day notice to the Beneficiary.

The Auditor verifies, for each expenditure item selected, the eligibility criteria set out above. The Auditor verifies that the actual expenditure for a selected item was incurred by and pertains to the Beneficiary. The Auditor shall consider detailed conditions for actual costs incurred as set out in Article 6, for this purpose the Auditor examines supporting documents (e.g. invoices, contracts) and proof of payment.

The Auditor also examines proof of work done, goods received or services rendered and he/she verifies the existence of assets, if applicable.

At the final reporting stage, the costs incurred during the implementation period but not yet paid can be accepted as actual costs incurred, provided that:

- A liability exists (order, invoice or equivalent) for services rendered or goods supplied during the implementation period of the action,
- The final costs are known, and
- These costs are listed in the final Financial Report together with the estimated date of payment. The Auditor verifies whether these costs have effectively been paid at the moment of the auditor's verification.

## **6. ACCOUNTS AND TECHNICAL AND FINANCIAL CHECKS**

### ***Accounts***

The Beneficiary shall keep accurate and regular accounts of the implementation of the Action using an appropriate accounting and double-entry book-keeping system. The accounts:

- a) May be an integrated part of or an adjunct to the Beneficiary's regular system;
- b) Shall comply with the accounting and book keeping policies and rules that apply in the economy concerned;
- c) Shall enable income and expenditure relating to the Action to be easily traced, identified and verified.

The Beneficiary shall ensure that any financial report as required under the Contract can be properly and easily reconciled to the accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose, the Beneficiary shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification.

### ***Right of access***

The Beneficiary shall allow verifications to be carried out by the RCC Secretariat. The Beneficiary has to take all steps to facilitate its work.

The Beneficiary shall allow the above entities to:

- a) Access the sites and locations at which the Action is implemented;
- b) Examine its accounting and information systems, documents and databases concerning the technical and financial management of the Action;
- c) Take copies of documents;
- d) Carry out on-the-spot-checks;
- e) Perform a full audit on the basis of all accounting documents and any other document relevant to the financing of the Action.
- j) For fuel and oil expenses, a summary list of the distance covered, the average consumption of the vehicles used, fuel costs and maintenance costs;
- k) Staff and payroll records such as contracts, salary statements and timesheets. For local staff recruited on fixed-term contracts, details of remuneration paid, duly substantiated by the person in charge locally, broken down into gross salary, social security charges, insurance and net salary.

The Beneficiary shall keep all records, accounting and supporting documents related to this Contract for 6 years following the payment and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim has been disposed of. They shall be easily accessible and filed so as to facilitate their examination and the Beneficiary shall inform the RCC Secretariat of their precise location.

All the supporting documents shall be available in the original form, including in electronic form.

In addition to the reports mentioned in Article 8 of the Contract, the documents referred to in this Article include:

- a) Accounting records (computerised or manual) from the Beneficiary's accounting system such as general ledger, sub-ledgers and payroll accounts, fixed assets registers and other relevant accounting information;
- b) Proof of conducted procurement procedures, including tendering documents, bids from tenderers and evaluation reports;
- c) Proof of commitments such as contracts and order forms;
- d) Proof of delivery of services such as approved reports, time sheets, transport tickets, proof of attending seminars, conferences and training courses (including relevant documentation and material obtained, certificates), etc.;
- e) Proof of receipt of goods such as delivery slips from suppliers;
- f) Proof of completion of works, such as acceptance certificates;
- g) Proof of purchase such as invoices and receipts;
- h) Proof of payment such as bank statements, debit notices, proof of settlement by the contractor;
- i) Proof that taxes and/or VAT that have been paid cannot actually be reclaimed;

## **7. NO-PROFIT RULE**

The grant may not produce a profit for the Beneficiary. Profit shall mean a surplus of the receipts over the eligible costs of the Action.

## **8. REJECTION OF INELIGIBLE COSTS**

The RCC Secretariat shall, at any time, reject any costs which are ineligible.

As a rule, the RCC Secretariat shall cover all costs upon conducted audit or risk assessment. Notwithstanding Article 5 of these General Terms and Conditions, the RCC Secretariat may at its own discretion determine whether certain costs are ineligible or not. Hence, the RCC Secretariat may withhold any and all payments to the Beneficiary.

Audit or risk assessment shall be conducted by either Grant Officer (as appointed by the RCC Secretariat) or the Auditor.

The RCC may request the Beneficiary to provide bank guarantee for any payments related to the Action.

## **9. REDUCTION OF THE GRANT**

The RCC Secretariat may - at the payment of the balance or afterwards - reduce the maximum grant amount, if the Action has not been implemented properly as described in Annex 1 or another obligation under the Contract has been breached.

The amount of the reduction will be proportionate to the improper implementation of the Action or to the seriousness of the breach.

Before reduction of the grant, the RCC Secretariat will formally notify the Beneficiary with a 'pre- information letter:

- Informing it of its intention to reduce the grant, the amount it intends to reduce and the reasons why; and
- Inviting it to submit observations within 30 days of receiving the notification.

If the RCC Secretariat does not receive any observations or decides to pursue reduction despite the observations it has received, it will formally notify confirmation of the reduction.

If the RCC Secretariat reduces the grant at the time of the payment of the balance, it will calculate the reduced grant amount for the Action and then determine the amount due as payment of the balance.

If the RCC Secretariat reduces the grant after the payment of the balance, it will calculate the revised final grant amount for the Beneficiary. If the revised final grant amount for the Beneficiary is lower than its share of the final grant amount, the RCC Secretariat will recover the difference.

## 10. TERMINATION OF THE CONTRACT

Either Party may terminate the Contract without cause by providing at least thirty (30) days written notice of termination to the other Party. Termination notice shall be delivered to the other Party by registered post, return receipt requested. Notice period starts to run as of the receipt of the termination notice by the other Party.

In addition, RCC Secretariat may terminate this Contract if the Beneficiary has committed severe breach of the Contract as defined under Article 5 of the Contract and in particularly if:

- The Beneficiary fails to fulfil obligations set under Articles 3, 8, 9 and 10 of the Contract;
- The Beneficiary fails, without justification, to fulfil any obligation set under the Contract and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of receipt of the letter;
- Beneficiary, or any related entity or person, have been found guilty of an offence concerning their professional conduct proven by any means;
- Beneficiary, or any related entity or person, have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity;
- A change to a Beneficiary's legal, financial, technical, organisational or ownership situation or the termination of the participation of a Beneficiary substantially affects the implementation of this Contract or calls into question the decision awarding the grant;
- The Beneficiary or any related person, are guilty of misrepresentation in supplying the information required in the award procedure or in the implementation of the Action or fails to supply – or fails to supply within the deadlines set under this Contract - any information related to the Action required by the RCC Secretariat;
- The Beneficiary has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the economy in which it is established;
- The RCC Secretariat has evidence that a Beneficiary, or any related entity or person, has committed substantial errors, irregularities or fraud in the Contract award procedure or in the implementation of the Action;
- The RCC Secretariat has evidence that a Beneficiary is subject to a conflict of interests;
- The Beneficiary has awarded sub-grant contrary to the provisions of the Contract;
- The Beneficiary is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations if not contrary to the mandatory rules of the Beneficiary's economy of incorporation.

In this case, the Contract is terminated at the day of delivery of the termination notice (registered post, return receipt requested) to the Beneficiary.

### *Effects of termination*

Upon termination of the Contract, the Beneficiary shall take all immediate steps to bring the Action to a close in a

prompt and orderly manner and to reduce further expenditure to a minimum.

Without prejudice to Article 10, the Beneficiary shall be entitled to payment only for the part of the Action carried out, excluding costs relating to current commitments that are due to be executed after termination.

In the cases of termination foreseen in points a), b), c), d), f), h) and k) of this Article, the Contracting Authority may, after having properly consulted the Beneficiary and depending on the gravity of the failings, request full or partial repayment of amounts unduly paid for the Action.

#### **11. RECOVERY OF UNSPENT BALANCES**

The financial reporting shall include information on interest income and/or unspent balances. Interest income shall be refunded to the RCC Secretariat within five (5) months after closure of the financial year and unspent balances shall be refunded to the RCC Secretariat within five (5) months of expiry of the Agreement to enable the Beneficiary to timely transfer the interest income and/or unspent balances to the RCC Secretariat.

For the refund to the RCC Secretariat of interest income and/or unspent balances, the RCC Secretariat will provide a written notification to the Beneficiary with the bank balances.

Transfers shall be made to the account via Swift in EURO in accordance with the official bank's currency rate at the day of transfer.

Where recovery is justified, the Beneficiary shall repay to the RCC Secretariat within 45 days of the issuing of a letter (debit note) by which the RCC Secretariat reclaims from the Beneficiary any amounts paid in excess of the final amount due or any non-eligible costs. If the Beneficiary fails to repay by the due date, the RCC Secretariat shall charge mandatory interest rate. The Beneficiary shall bear all bank charges related to the due amounts.

The RCC Secretariat may be offset against amounts of any kind due to the Beneficiary, without prior consent of the latter.

#### **12. PRIVILEGES AND IMMUNITIES**

Nothing contained in the Contract shall be deemed a waiver, express or implied, of any privilege or immunity that the RCC Secretariat may enjoy pursuant to: (i) Host Country Agreement, or (ii) any other agreement to which the RCC Secretariat is a party.

#### **13. TAX EXEMPTION**

The RCC Secretariat is exempted from taxes and duties in accordance with the provisions of the Host Country Agreement providing inter alia that the RCC Secretariat, its funds and other property shall be exempted from direct state and local duties and taxes, except charges for public utility services, and from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use.

In the event any governmental authority refuses to recognise the exemptions of the RCC Secretariat from such taxes, restrictions, duties, or charges, the Beneficiary shall immediately consult with the RCC Secretariat to determine a mutually acceptable procedure.

#### **14. LIABILITY OF THE CONTRACTING PARTIES**

The RCC Secretariat cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Beneficiary while the Action is being carried out or as a consequence of the Action. The RCC Secretariat cannot, therefore, accept any claim for compensation or increases in payment in connection with such damage or injury.

The Beneficiary shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them while the Action is being carried out or as a consequence of the Action. The Beneficiary shall discharge the RCC Secretariat of all liability arising from any claim or action brought as a result of an infringement of rules or regulations by the Beneficiary or the Beneficiary's employees or individuals for whom those employees are responsible, or as a result of violation of a third party's rights. For the purpose of this Article employees of the Beneficiary shall be considered third parties.

#### **15. THIRD PARTIES**

The Beneficiary shall not, without prior and express written approval of the RCC Secretariat, assign in whole

or in part the rights and obligations arising from the Contract to third parties.

## **16. NON-WAIVER OF RIGHTS**

Failure of, or delay by the RCC Secretariat in the exercise of any rights or remedies provided by the Contract shall not be deemed a waiver of any rights of the RCC Secretariat, and shall not release the Beneficiary from fulfilling its obligations.

## **17. CONFIDENTIALITY**

The Beneficiary, or its employees, shall not use any information acquired or developed in the course of this Contract for any purpose not authorised in writing by the RCC Secretariat.

The Beneficiary is required to exercise the utmost discretion during the performance of the Contract.

The Beneficiary may not communicate to any other person, government or authority external to the RCC Secretariat any information known to it by reason of his contractual relationship with the RCC Secretariat which has not previously been made public, except with written authorisation of the RCC Secretariat. Nor shall the Beneficiary at any time use such information to private advantage.

The obligations under this Article do not lapse upon cessation of this Contract.

The Beneficiary shall be liable for any breach of confidentiality or any indirect disclosure which could vitiate the interests of the RCC Secretariat. The extent of any such liability shall be directly proportional to the extent of the damage caused.

## **18. OBSERVANCE OF THE LAW**

The Beneficiary shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract.

## **19. ADVERTISING**

Unless authorised in writing by the RCC Secretariat, the Beneficiary shall not advertise or otherwise make public the fact that it has concluded the Contract with the RCC Secretariat. The Beneficiary shall not use the name, emblem or official seal of the RCC Secretariat or any

abbreviation of the names of the RCC Secretariat for advertising or for any other promotional purpose.

## **20. OWNERSHIP/USE OF RESULTS AND ASSETS**

20.1. Unless otherwise stipulated in the Special Conditions, ownership of, and title and intellectual and industrial property rights to, the Action's results, reports and other documents relating to it will be vested in the Beneficiary(ies).

20.2. Without prejudice to Article 20.1, the Beneficiary(ies) grant the RCC (and the European Commission where it is not the RCC) the right to use freely and as it sees fit, and in particular, to store, modify, translate, display, reproduce by any technical procedure, publish or communicate by any medium all documents deriving from the Action whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.

20.3. The Beneficiary(ies) shall ensure that it has all rights to use any pre-existing intellectual property rights necessary to implement this Contract.

20.4. In case natural, recognisable persons are depicted in a photograph or film, the Beneficiary shall, in the final report to the Contracting Authority, submit a statement by these persons giving their permissions for the described use of their images. The above does not refer to photographs taken or films shot in public places where random members of the public are identifiable only hypothetically and to public persons acting in their public activities.

20.5. Unless otherwise clearly specified in the Description of the Action in Annex I, the equipment, vehicles and supplies paid for by the Budget for the Action shall be transferred to the final beneficiaries of the Action, at the latest when submitting the final report.

If there are no final beneficiaries of the Action to whom the equipment, vehicles and supplies can be transferred, the Beneficiary(ies) may transfer these items to: local authorities; local Beneficiary(ies); local affiliated entity(ies); another action funded by the European Union; or, exceptionally, retain ownership of these items. In such cases, the Beneficiary shall submit a justified written request for authorisation to the Contracting Authority, with an inventory listing the items concerned and a

proposal concerning their use, in due time and at the latest with the submission of the final report.

In no event may the end use jeopardise the sustainability of the Action or result in a profit for the Beneficiary(ies).

20.6 Copies of the proofs of transfer of any equipment and vehicles for which the purchase cost was more than EUR 5000 per item shall be attached to the final report. Proofs of transfer of equipment and vehicles whose purchase cost was less than EUR 5000 per item shall be kept by the Beneficiary(ies) for control purposes.

## **21. VISIBILITY AND TRANSPARENCY**

The Beneficiary(ies) shall take all necessary steps to publicise the fact that the European Union has financed and RCC co-financed the Action. Such measures shall comply with the Communication and Visibility Manual for European Union External Actions laid down and published by the European Commission, that can be found at: [https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions\\_en](https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en) or and RCC Visual Identity Guidelines that can be found at: [https://www.rcc.int/files/user/docs/brochures/RCC\\_Visual\\_Guidelines\\_for\\_External\\_Parties.pdf](https://www.rcc.int/files/user/docs/brochures/RCC_Visual_Guidelines_for_External_Parties.pdf) In particular, the Beneficiary(ies) shall mention the Action and the European Union's financial contribution in information given to the final recipients of the Action, in its internal and annual reports, and in any dealings with the media. It shall display the European Union logo wherever appropriate.

Any notice or publication by the Beneficiary(ies) concerning the Action, including those given at conferences or seminars, shall specify that the Action has received European Union funding. Any publication by the Beneficiary(ies), in whatever form and by whatever medium, including the internet, shall include the following statement:

“This document [or activities are conducted] has been produced through a grant provided by the Regional Cooperation Council’s Tourism Development and Promotion Project, funded by the European Union. The content of this document [publication/video/brochure/etc.] is the sole responsibility of the <name of the author/partner> and does not necessarily reflect the views

of the Regional Cooperation Council or the European Union.”

The Beneficiary(ies) authorises the RCC and the European Commission to publish its name and address, nationality, the purpose of the grant, duration and location as well as the maximum amount of the grant and the rate of funding of the Action's costs, as laid down in Article 3 of the Special Conditions. Derogation from publication of this information may be granted if it could endanger the Beneficiary(ies) or harm their interests.

## **22. AMENDMENTS AND ADDITIONS TO THE CONTRACT**

The provisions of the Contract and the annexes thereto may be amended or supplemented only by means of a supplementary written agreement signed by all of the Parties or their authorised representatives.

## **23. OFFICIALS NOT TO BENEFIT**

The RCC Secretariat warrants that no official or employee of the Beneficiary has been or shall be admitted by it to any direct or indirect benefit arising from this Contract or the award thereof. Failure to comply with the foregoing provision shall constitute a material breach of the Contract.

The Beneficiary warrants that no official or employee of the RCC Secretariat has been or shall be admitted by it to any direct or indirect benefit arising from this Contract or the award thereof. Failure to comply with the foregoing provision shall constitute a material breach of the Contract.

## **24. AMENDMENTS TO THE CONTRACT**

Any amendment to the Contract, including the annexes thereto, shall be set out in writing.

The amendment may not have the purpose or the effect of making changes to this Contract that would call into question the grant award decision

## **25. APPLICABLE LAW**

The Contract shall be governed by the laws of Federation of Bosnia and Herzegovina.