

## Model of Partnership Agreement between Lead Partner and Project Partners of an ESPON 2013 Project

This document consists of Part A and part B.

**-Part A is compulsory for all ESPON 2013 partnership** and has to be filled in the parts marked in grey.

**-Part B** is to be defined and detailed by the partnership and shall contain information on how to coordinate and implement activities and how to disseminate results. It must be negotiated between partners and tailored to the partnership's individual needs.

**For the parts marked in grey in Part A and for Part B, the Managing Authority/ Coordination Unit cannot guarantee and are not liable for completeness, correctness, up-to-datedness and full compatibility with EU and national law.**

Having regard to

- Article 20.1.a of the Regulation (EC) No 1080/2006 that states that it is the responsibility of the lead beneficiary appointed for each project to *lay down the arrangements for its relations with the beneficiaries participating in the project in an **agreement** comprising, inter alia, provisions guaranteeing the sound financial management of the funds allocated to the project, including the arrangements for recovering amounts unduly paid;*
- Art. 17.2 of the Regulation (EC) No 1080/2007 where it is recalled that *agreements have to be in place between the beneficiaries of an project;*
- § 6.6 of the Agreement between the Member/Partner States and the Grand-Duchy of Luxembourg;
- Section 8.2 of the Programme Manual, as approved by the Monitoring Committee of the Programme;

The following agreement shall be made between

[Name and address], represented by [Representative] (Lead Partner)

and

[Name and address], represented by [Representative] (Project Partner 1),

[Name and address], represented by [Representative] (Project Partner 2),

[Name and address], represented by [Representative] (Project Partner 3),

[Name and address], represented by [Representative] (Project Partner 4),

[Name and address], represented by [Representative] (Project Partner 5),

for the implementation of the ESPON 2013 project # 00XX, project title / acronym approved by the Monitoring Committee of the Operational Programme ESPON 2013 “The European Observation Network on Territorial Development and Cohesion” on [date] in [place] under Priority 1, 2 or 3 (please set).

## PART A

### § 1

#### Object of the partnership

1. Subject of this agreement is the organisation of a partnership in order to implement the ESPON 2013 project # 00XX, project title / acronym as indicated in the annexes. The annexes comprise:

- the application approved by the Monitoring Committee of the Programme on [date] in [place] including annexes (**Annex I**),
- the Subsidy Contract between the Managing Authority of the Programme and the Lead Partner dated [date] (**Annex II**);
- The detailed budget for each Project Partner (breakdown per budget line) (**Annex III**)  
**This has to be provided compulsorily with the AnnexIII.xls form**

2. The annexes - including all provisions they are based on and refer to - are considered to be an integral part of this agreement.

### § 2

#### Subject of the Partnership Agreement

By the present Partnership Agreement, the Lead Partner and the other Project Partners shall define the rules of procedure for the work to be carried out and the relations that shall govern them within the transnational Partnership set up in order to complete the above-mentioned project as approved by the Programme Monitoring Committee.

### § 3 Duration of the Agreement

1. This Partnership Agreement will enter into force retrospectively from [the date of the approval decision of the Monitoring Committee].
2. It shall terminate three years after the closure of the ESPON 2013 Programme as defined in Article 89 of Regulation (EC) No 1083/2006.

### § 4 Obligations

1. The Lead Partner and the partners commit themselves in doing everything in their power to foster the implementation of the project as defined in § 1 of the present agreement and shall ensure timely commencement of the project and implementation of the entire project within the time schedule in compliance with all obligations to the Managing Authority.
2. The Lead Partner shall fulfil all obligations arising from the Subsidy Contract, the Programme Manual, the Operational Programme and the approved application, including annexes.  
In particular, the Lead Partner shall fulfil the following obligations:

- Comply with the requirements set in the **Subsidy Contract § 1 Legal framework**;
- Provide the overall coordination, management and implementation of the project;
- Represent the partnership and fulfil all the duties rising from representing the partnership, as listed in **Subsidy Contract § 7 Representation of the project partnership, liability**;
- Appoint a Project Coordinator and a financial manager in compliance with the requirements set in **section 8.3.4 of the Programme Manual**;
- Setting-up efficient and reliable management and control system, coordination system and audit trail (in compliance with the requirements in **section 8 of the Programme Manual**);
- Start and implement the project according to the description in the application form (including annexes) approved by the Monitoring Committee of the Programme and according to the implementation schedule given both in the application form and in the Programme Manual, as required by **Art.20 (1)b) of Regulation (EC) No 1080/2006**;
- Ensure that all the expenditure presented by the partners has incurred for the purpose of implementing the project and correspond to the activities agreed by the partners and described in the application form and its annexes, as required by **Art.20 (1)c) of Regulation (EC) No 1080/2006**;

- Draw up and present progress reports as defined in the Subsidy Contract **Subsidy Contract §5 Request of payments and in section 8.5 of the Programme Manual**;
- Request payments according to the procedure set in **Subsidy Contract §5 Request of payments and in section 8.5 and 8.6 of the Programme Manual**, after having verified that the expenditure of the partners has been validated by the first level controllers (**Art.20 (1)d) of Regulation (EC) No 1080/2006**);
- Receive payments from the Certifying Authority of the Programme and transfer portions of it to the partners as soon as possible, as required by **Art.20 (1)e) of Regulation (EC) No 1080/2006**;
- Guarantee the sound financial management of the funds allocated to the project, including arrangements for recovering amounts unduly paid, as in **Art.20 (1)a) of Regulation (EC) No 1080/2006**;
- Communicate with the Programme Authorities and bodies involved in the Programme implementation and report timely to the project partnership;
- React promptly to any request by the Programme Authorities and bodies involved in the Programme implementation;
- Notify the partners immediately of any event that could lead to a temporary or final discontinuation or any other deviation of the project;
- Support any audit or control, in compliance with the requirements set in **Subsidy Contract §12 Control and audits**;
- Properly archive documentation, as per the requirement stated in the **Subsidy Contract §11 Archiving of documentation**.

3. Every partner shall fulfil all obligations arising from the Subsidy Contract, the Programme Manual, the Operational Programme and the approved application, including annexes.

- Comply with the requirements set in the **Subsidy Contract §1 Legal framework**;
- Appoint a project manager for the parts of the project for which it is responsible and give the project leader the authority to represent the partner in the project;
- Setting-up efficient and reliable management and control system and audit trail at a Project Partner level (in compliance with the requirements in **section 8 of the Programme Manual**);
- Start and implement the part of the project for which it is responsible according to the description in the application form (including annexes) approved by the Monitoring Committee of the Programme and according to the implementation schedule given both in the application form and in the Programme Manual, as required by **Art.20 (1)b) of Regulation (EC) No 1080/2006**;

- Ensure that his expenditure has incurred for the purpose of implementing the project and correspond to the activities agreed by the partners and described in the application form and its annexes, as required by **Art.20 (1)c) of Regulation (EC) No 1080/2006**;
- Having his share of expenditure verified by a first level controller, according to the procedure set in **section 8.6 of the Programme Manual**;
- Support the Lead Partner in drawing up and presenting progress reports as defined in the Subsidy Contract, see **Subsidy Contract §5 Request of payments and in section 8.5 of the Programme Manual**;
- Support the Lead Partner in preparing the request payments according to the procedure set in **Subsidy Contract §5 Request of payments and in section 8.5 and 8.6 of the Programme Manual**;
- Guarantee the sound financial management of the funds allocated to the project, in compliance with Subsidy Contract **§1 Legal framework and the Programme Manual**;
- Assume the responsibilities set by **Art.20 (2)a) and b) of Regulation (EC) No 1080/2006**;
- React promptly to any request of the Lead Partner, of Programme Authorities and bodies involved in the Programme implementation, in particular for what concerns requests related to the coordination and implementation of the project;
- Notify the Lead Partner immediately of any event that could lead to a temporary or final discontinuation or any other deviation of the project;
- Timely inform the Lead Partner in case the Project Partner as private partner becomes insolvent and / or is moving towards liquidation or declares bankruptcy;
- Support any audit or control, in compliance with the requirements set in **Subsidy Contract §12 Control and audits**;
- Properly archive documentation, as required by **Subsidy Contract §11 Archiving of documentation**.

## § 5 Liability

1. Each partner, including the Lead Partner, shall be liable to the other partners and shall indemnify and hold harmless such other partners for and against any liabilities, damages and costs resulting from the non-compliance of its duties and obligations as set forth in this agreement and its annexes.

2. No party shall be held liable for not complying with obligations ensuing from this agreement in case of *force majeure*. In such a case, the partner involved must announce this immediately in writing to the other partners of the project.

## **§ 6 Activities**

All the partners shall adhere to the timetable, actions, outputs, indicators and to the contents reported and detailed in the approved application form and in its annexes.

## **§ 7 Organizational Structure of the Partnership**

1. For the successful management of the partnership and completion of the Project, a 'Project Steering Committee' will be set up. The Project Steering Committee will be responsible for monitoring the implementation of the project. The Project Steering Committee will be chaired by the Lead Partner. Its members shall include the Lead Partner, Project Partners and any other organizations or individuals deemed appropriate by the Lead Partner and the Partners.

The Project Steering Committee shall meet on a *[define frequency]* basis. The Managing Authority/Coordination Unit might also be invited to attend meetings.

*2. [Specify the detailed composition of the Project Steering Committee, its role and assignments, and the decision making process, its duties in setting the disputes among project participants. Please also specify that the Project Steering Committee will adopt its rules of procedure.]*

## **§ 8 Cooperation with third parties, delegation and outsourcing**

1. In case of cooperation with third parties including suppliers of good/services, the Project Partner concerned shall remain solely responsible to the Lead Partner concerning compliance with its obligations as set out in this Partnership Agreement.

2. The Lead Partner shall be informed by the Project Partner about the subject and party of any contract concluded with a third party.

3. No Project Partner shall have the right to transfer its rights and obligations under this Partnership Agreement without the prior consent of the other project participants and the responsible Programme implementing bodies.

4. Co-project with third parties including suppliers of goods/service shall be undertaken in accordance with procedures set out in the public procurement rules applicable to the contracting partner and in compliance with the EU directives on public procurement.

## **§ 9**

### **Assignment, legal succession**

1. Neither the Lead Partner nor the partners are allowed to assign their duties and rights under this agreement without the prior consent of the other parties to this agreement. The parties to this agreement are aware of the provisions of the Subsidy Contract whereupon the Lead Partner and the Project Partners are allowed to assign duties and rights as laid down in the Subsidy Contract only by obtaining the prior written consent of the Managing Authority and the Monitoring Committee of the ESPON Programme.

2. In the case of legal succession, the Lead Partner or the partner concerned is obliged to transfer all duties under this agreement to the legal successor.

## **§ 10**

### **Project Budget and eligibility of expenditure**

1. The Lead Partner and Project Partners shall implement the project according to the budget reported in the approved application form and annexes.

2. The detailed budget break-down per Project Partner will be delivered to the Managing Authority/Coordination Unit with the inception report.

3. The eligibility of expenditure will be determined in compliance with the documents mentioned in the **Subsidy Contract, § 1 Legal framework**.

## **§ 11**

### **Budgetary and financial management, accounting principles**

1. The Lead Partner is the sole responsible party to the Managing Authority/Coordination Unit and the Monitoring Committee of the Programme for the budgetary and financial management of the operation. The Lead Partner shall be responsible for the realisation and the transfer of payment claims to its partners as well as for an application for budget reallocation according to the procedure in chapter 8.8 of the Programme Manual.

2. For each financial claim, following payment of funds to the Lead Partner, the Lead Partner shall pay, as soon as possible, the sums assigned to each partner by bank transfer. No deduction, retention or further specific charge shall be made.

3. The Lead Partner must ensure the correctness of the accounting and financial reports and documents drawn up by the partners. The Lead Partner may request further information, documentation and evidence from the partners to that effect.

4 Every partner will be held responsible for its budget up to the amount as to which the partner participates in the operation.

5. Every partner commits to keeping separate accounts solely used for the operation as defined in section 8.5.3 of the Programme Manual. The accounts shall provide for

registration in Euros (EUR; €) of total expenses (expenditure) and of the return (income) related to the operation.

6. Accounting reports or other documents, including copies of all pieces of evidence (invoices, documents related to tender, bank statements, etc.) shall be submitted to the Lead Partner or to the body appointed to that effect, in accordance with the schedule and requirements stipulated by the Lead Partner. The partners are obliged to have their expenditure validated by a first level controller, according to the procedure set in Chapter 8.6 of the Programme Manual.

7. In default of evidence or in the event of non-fulfilment of the rules concerning eligibility of expenditure, the Lead Partner shall ask the partners to redraft the submitted financial documents. In case of repeated non-fulfilment, the Lead Partner shall be entitled to deny the expenditure declared by a partner. In that case, the Lead Partner is obliged to inform the partner concerned on the denial of the expenditure declared and the motivation thereto; also the Managing Authority/Coordination Unit of the Programme" shall be informed.

## **§ 12**

### **Modification of the work plan and budget reallocation**

1. Before applying for a budget reallocation according to the procedure set in chapter 8.8 of the Programme Manual, the Lead Partner shall obtain the approval of its partners.

2. Any request for amendment of the Subsidy Contract presented by the Lead Partner according to chapter 8.8 of the Programme Manual shall be authorised by the partners of the project beforehand.

## **§ 13**

### **Monitoring, Evaluation and Reporting**

1. The Lead Partner has overall responsibility for monitoring the actions undertaken by the Project Partners on an on-going basis. Monitoring, evaluation and reporting requirements for all partners are set in the **Programme Manual chapter 8** and in the **Subsidy Contract §5 Request for payments**.

2. The Lead Partner is responsible for submitting the inception report, the progress reports, the interim reports, the draft final report, the final report and the scientific deliveries to the Managing Authority/Coordination Unit through the project lifetime. The purpose of these reports is described in the Programme Manual. The reporting periods as laid down in the Subsidy Contract as well as instructions in the reporting forms shall be observed.

3. Each Project Partner is obliged to supply the Lead Partner with all information that the latter deems necessary for the preparation of above reports and for any other specific documentation that might be requested by the Project Steering Committee or the Programme Authorities.



4. The lead partner shall systematically keep the partners informed on a regular basis of all relevant communication with the bodies implementing the Programme.

#### **§ 14 Controls and audits**

1. For audit purposes, the Lead Partner and the Project Partners shall:

a) Agree to have their expenditure controlled and validated by a first level controller as specified in the Subsidy Contract in **§5 Request for payments, § 7.4.b, § 12 Control and audits** and in **Programme Manual chapter 8.6**;

b) Retain all files, documents and data concerning the project as required by the **Subsidy Contract § 11 Archiving of documentation**.

c) Make all the necessary arrangements to ensure that any audit performed by auditing bodies of the European bodies, European Commission Services, the European Court of Auditors, other auditing bodies of the participating Member and Partner States or other national auditing bodies as well as the Managing Authority, the Certifying Authority and the Coordination Unit can be carried out, by producing all documents required for the above controls and audit, providing and giving access to all the necessary information and documents supporting the audit trail, giving access to business premises, as in **§ 12.2 and 12.3 of the Subsidy Contract**.

2. The information concerning the reality and validity of actions and expenses eligible for funding provided by each Project Partner shall engage solely its own responsibility.

#### **§ 15 Communication and Publicity**

1. The Project Partners shall implement the communication and publicity measures in accordance with the project application and Commission Regulations on information and publicity measures to be carried out by the Member States concerning assistance from the Structural Funds. They shall play an active role in any actions organized to disseminate the results of the project. Any public relations measure shall be co-ordinated by the Lead Partner.

2. All partners shall comply with the requirements set in **§ 8 Publicity of the Subsidy Contract**.

#### **§ 16 Dissemination of Project Outcomes**

1. The Lead Partner and the other Project Partners shall take note of the fact that the results of the project may be made available to the public and they agree that the results of the project shall be available for all interested parties.

2. They furthermore commit to playing an active role in any actions organized to capitalize on, disseminate and valorize the results of the project.

3. All partners shall comply with the requirements set in **§ 8 Publicity of the Subsidy Contract**.

## **§ 17 Intellectual Property Rights**

The Lead Partner and the Project Partners shall ensure that all the conditions set by **§ 9 Ownership of results of the Subsidy Contract** are complied with.

## **§ 18 Confidentiality Requirements**

1. Although the nature of the implementation of the project is public, part of the information exchanged in the context of its implementation between the Lead Partner and the partners, the partners themselves or bodies implementing the Programme can be confidential. Only documents and other elements explicitly provided with the statement “confidential” shall be regarded as such.

2. The Lead Partner and the Project Partners commit to taking measures to ensure that all staff members carrying out the work respect the confidential nature of this information, and do not disseminate it, pass it on to third parties or use it without prior written consent of the Lead Partner and the partner institution that provided the information.

3. This confidentiality clause shall remain in force for two years following the termination of this agreement.

## **§ 19 Non-fulfilment of obligations or delay, reimbursement**

1. Every partner is obliged to promptly inform the Lead Partner and to provide the latter with all necessary details should there be events that could jeopardise the implementation of the project.

2. Should one of the partners be in default, the Lead Partner shall admonish the respective partner to comply within a maximum of one month. The Lead Partner shall make any effort to contact the partners in resolving the difficulties.

3. Should the non-fulfilment of obligations continue, the Lead Partner may decide to exclude the partner concerned from the project, with approval of the Project Steering Committee. The Managing Authority/Coordination Unit of the Programme shall be informed immediately if the Lead Partner intends to exclude a partner from the project.

4. The excluded partner is obliged to refund to the Lead Partner any programme funds received which it cannot prove on the day of exclusion that they were used for the implementation of the project according to the rules of eligibility of expenditure.

5. In case of non-fulfilment of a partner's obligation having financial consequences for the funding of the project as a whole, the Lead Partner may demand compensation to cover the sum involved.

6. In the event of total or partial incompleteness of the obligations of any of the Project Partners or in the event of material errors in the effective execution of project activities, the Project Partner(s) responsible for total/partial incompleteness undertakes to reimburse the Lead Partner any funds that have been unduly received, within two weeks following notification.

## **§ 20**

### **Demand for repayment by the Managing Authority**

Should the Managing/Certifying Authority of the Programme in accordance with the provisions of the **Subsidy Contract §10 Right of termination** demand repayment of subsidy, every partner is obliged to transfer its portion of the repayment amount to the Lead Partner. The Lead Partner shall, without delay, submit the letter by which the managing authority has asserted the repayment claim and notify every partner of the amount repayable. The repayment amount is due within two weeks following the notification by the Lead Partner. The amount repayable shall be subject to interest; the provisions of the **Subsidy Contract §10 Right of termination** shall apply by analogy.

## **§ 21**

### **Disputes between partners**

1. Should a dispute arise between partners of the project, every partner shall be obliged to submit the dispute to the [a mediator] in order to reach a settlement.

2. The Lead Partner will inform the other Project Partners and may, on its own initiative or upon request of a Project Partner, ask the Managing Authority/Coordination Unit of the Programme for advice.

3. Should a compromise through mediation of the [mediator] not be possible, every partner shall be obliged to request and accept arbitration carried out by an ad-hoc arbitration committee after having asked the Managing Authority/Coordination Unit of the Programme for advice through the Lead Partner. This will consist of [number] of [number] different nationalities, one of which being the same as the Project Partner involved in the dispute, appointed by the [a board, committee or group to be set up by the partnership]. If the [a board, committee or group to be set up by the partnership] has not appointed all the expert arbitrators within one month of the Lead Partner's request to it to decide on such appointment, the Lead Partner shall have the authority to appoint all [number as stated before] expert arbitrators. In the latter case, a designated member of the Managing Authority/Coordination Unit of the Programme will supervise the proceeding of the arbitration committee.

4. Every partner shall be obliged to accept and apply the decisions of the arbitration committee, subject to the applicable law hereby agreed upon and in compliance with the provisions of the Community law.

## **§ 22**

### **Working Language**

1. The working language of this Partnership shall be English, as official language of the Programme ESPON 2013 and of the Subsidy Contract between Lead Partner and Managing Authority.

2. In case of the translation of this document into another language, the *English* version shall be the binding one.

## **§ 23**

### **Applicable law, translation languages**

1. This agreement is governed by [law of the country where the Lead Partner is located or law where the Managing Authority programme is located] law.

2. In the event of translation of this agreement and its annexes, the English version shall prevail.

## **§ 24**

### **Nullity**

If any provision in this agreement should be wholly or partly ineffective, the parties to this agreement undertake to replace the ineffective provision by an effective provision which comes as close as possible to the purpose of the ineffective provision.

## **§ 25**

### **Amendment of the Partnership Agreement, withdrawals**

1. This agreement shall only be amended in writing by means of an amendment to that effect signed by all parties involved. Any modification to the present Partnership Agreement shall form the subject of a rider to this contract, which shall be submitted for the approval of all the signatory Project Partners.

2. Modifications to the project that have been approved by the Programme Authorities, in compliance with the procedure set in **Programme Manual chapter 8.8**, can be carried out without amending the agreement.

3. The Lead Partner and the Project Partners agree not to withdraw from the project unless there are unavoidable reasons for it. If this were nonetheless to happen the Lead Partner and the Project Partners shall endeavor to cover the contribution of the withdrawing Project Partner, either by assuming their tasks or by asking one or more new Project Partners to join the partnership.

**§ 26**  
**Lapse of time**

Legal proceedings concerning any issue ensuing from this agreement may not be lodged before the courts more than three years after the claim was constituted. In the event of legal proceedings concerning a claim to refund funds, a period of three years following the last transfer shall be applied.

**§ 27**  
**Domicile**

1. To the effect of this agreement, the partners shall irrevocably choose domicile at the address stated in the application form (**Annex 1**) where any official notifications can be lawfully served.

2. Any change of domicile shall be forwarded to the Lead Partner within 15 days following the change of address by registered mail.

**§ 28**  
**Force Majeure**

No party shall be held liable for not complying with obligations ensuing from this Partnership Agreement should the non-compliance be caused by force majeure.

**PART B**

**§ [...]**

*Part to be developed by the partnership with some more details on how to coordinate, implement activities and disseminate results.*

*Please add details also on the possibility for the project and the PSC to set-up sub-group/workgroups dealing with specific tasks related to the project.*

*[...]*

Drawn up at [place]

**Lead partner**

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Project Partner 1**

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Project Partner 2**

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Project Partner 3**

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Project Partner 4**

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Project Partner ...**

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Annexes**

**Annex I** Approved application including its annexes

**Annex II** Subsidy Contract between the Managing Authority of the Programme and the Lead Partner dated [date]

**Annex III** The detailed budget for each Project Partner (breakdown per budget line)