



**Subsidy Contract
for the implementation of the project
Project number, Project theme
of the Operational Programme ESPON 2013
“The European Observation Network on
Territorial Development and Cohesion”**

between

**Ministry of Sustainable Development and Infrastructures of the Grand Duchy of
Luxembourg, Department for Spatial Planning and Development**

1, Rue de Plébiscite,
L-2341 Luxembourg

acting as Managing Authority of the “Operational Programme ESPON 2013-The European
Observation Network on Territorial Development and Cohesion”, hereinafter referred to as
MA

and

Lead Partner organisation

with its office at **address of the Lead Partner**

represented by **representative of the Lead Partner**

(name and function of the signatory)

hereinafter referred to as Lead Partner (LP), meaning the final beneficiary, as defined in
Art. 20(1) of the Regulation (EC) No 1080/2006

is concluded on the basis of the following clauses and in accordance with Article 15(2) of
Regulation (EC) No 1080/2006, and lays down the implementing arrangements for the
project **Project number, Project theme, project proposal Project title / Acronym (registration
number)**.



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§ 1

Legal framework

1. Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing regulation (EC) No 1260/1999 (Council Regulation (EC) No 1341/2008 of 18 December 2008 amending Regulation (EC) No 1083/2006, in particular Article 55);
2. Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999;
3. Commission Regulation (EC) No 1828/2006 of 8 December 2006, setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund;
4. Community rules regarding Community horizontal policies such as the rules for competition and entry into the markets, the protection of the environment, the equal opportunities between men and women and public procurement;
5. National rules applicable to the LP and its Project Partners;
6. The Operational Programme Document 'ESPON Programme' 2013 CCI 2007CB163PO022, approved by the European Commission on 7th November 2007, hereinafter referred to as OP, setting the strategy of the Programme;
7. The Programme Manual;
8. The Project Specifications related to the call;
9. The Agreement between the Member and Partner States and the Grand-Duchy of Luxembourg on the implementation of the ESPON 2013 Programme, hereinafter referred to as the Agreement;
10. The specific requirements set by the Partner States of Norway, Iceland, Liechtenstein and Switzerland.

The MA shall publish the updates about the Programme Manual and the relevant changes to other Programme Documents in the Programme web site (www.espon.eu).

The LP and the Project Partners shall regularly check from the Programme web site the last updated version of the above documents, in order to guarantee compliance with the latest updates.

§ 2 Award of subsidy

1. In accordance with the decision of the Monitoring Committee as mentioned in Chapter IV.1.1, par.2 *Monitoring Committee* of the Operational Programme and in § 2(13) of the Agreement, an earmarked subsidy is awarded to the LP for the project [project number, project theme, project proposal Project title / Acronym (registration number)]. from funds of the Programme as follows:

Approved Programme contribution
(maximum provisional amount): 000,000.00 Euro (€)

Approved contribution from the Partner
States contribution
(maximum provisional amount) 000,000.00 Euro (€)

Maximum amount of funding awarded: 000,000.00 Euro (€),

Approved project budget as in the application form
(maximum provisional amount): 000,000.00 Euro (€)

Lead Partner - name of LP, country	Budget 000,000.00 (maximum provisional amounts)	Programme funding 000,000.00 (maximum provisional amounts)
Project Partner 2 name of PP, country	Budget 000,000.00 (maximum provisional amounts)	Programme funding 000,000.00 (maximum provisional amounts)
Project Partner 3 name of PP, country	Budget 000,000.00 (maximum provisional amounts)	Programme funding 000,000.00 (maximum provisional amounts)

The above allocations of funding are considered maximum **provisional** amounts: under-spending of finances will lead to a proportional reduction of the Programme funding. The final sum of the Programme funding will be paid on the basis of the reported eligible expenditure.

2. Disbursement of the subsidy shall be made subject to the condition that the European Commission and Member and Partner States make the funds available to the extent described above.
3. If the European Commission and/or Member and Partner States fail to make the funds available, the MA is entitled to terminate this contract and any claim by the LP against the MA for whatever reason is excluded.

§ 3

Object of use

1. The subsidy is awarded exclusively for the project as it is described in the application form and its annexes as approved by the Monitoring Committee. The approval decision including annexes and the approved application form constitute an integral part of this contract.

§ 4

Eligibility of costs, reallocation

1. Costs which qualify for a subsidy pursuant to § 2 *Award of subsidy*, No 1 exclusively consist of eligible costs as listed in the approved application. The eligibility of costs for Programme funding is regulated by the compliance of the expenditure with the legal provisions of § 1 *Legal framework*, § 8 *Publicity* and with the Programme Manual. Progress reports must be validated by the first level controllers referred to in Article 16(1) of Regulation (EC) No 1080/2006 and then submitted to the Coordination Unit (CU) in compliance with the procedure listed in chapters 8.5.1 and 8.6 of the Programme Manual.
2. Costs for the project are eligible if incurred in the eligibility period, as this is described in chapter 8.4.1 of the Programme Manual.
The project period results from the number of months quoted as 'project duration' in the approved application. The earliest date from which costs for the project can be considered as eligible the day of the pre-announcement of the call in the Official Journal of the European Communities. The specific eligibility period is defined as follows:

Start of the project	dd/mm/yyyy
Closure of the activities	dd/mm/yyyy
Closure of the administrative duties	dd/mm/yyyy

3. The LP is entitled to reallocate the budget according to the options listed in chapter 8.8 of the Programme Manual. Such reallocation requires an application to the MA. The procedure for requesting a budget change is listed in chapter 8.8. of the Programme Manual.

§ 5

Request for payments

1. The LP may only request payments by providing proof of progress of the project according to the forecast in section 1.9 of the approved application form. Therefore the LP has to present progress reports, consisting of an activity report and a financial report validated by the first level control, to the CU. The CU will provide reporting forms, which must be used by the LP. Instructions as laid down in the reporting forms and in the Programme Manual must be observed.
2. All reports must be submitted in English.

3. The first progress report must be submitted to the CU by the dd/mm/yyyy at the latest. Further progress reports have to be submitted by the dd/mm/yyyy, dd/mm/yyyy, dd/mm/yyyy, dd/mm/yyyy and dd/mm/yyyy at the latest. Late reporting with respect of the abovementioned deadlines must be approved specifically by the MA on an ad hoc basis. The last progress report is due four months after the official closing date of the project; as indicated in chapter 8.9.1 of the Programme Manual. The MA will indicate the official closing date to the LP in due time.
4. Based on the fact that payments by the European Commission to the MA will only be made in accordance with the corresponding budget commitments (Articles 76(1) and 75(1) of Council Regulation (EC) No 1083/2006), the LP must request payments within the following timeframe, as specified in the approved application form, section 2.

	Total costs (€)	Expected payment request (€)
Year: YYYY Reporting period 1 (dd/mm/yyyy - dd/mm/yyyy)	Amount: 000,000.00	000,000.00
Year: YYYY Reporting period 2 (dd/mm/yyyy - dd/mm/yyyy)	Amount: 000,000.00	000,000.00
Year: YYYY Reporting period 3 (dd/mm/yyyy - dd/mm/yyyy)	Amount: 000,000.00	000,000.00
Year: YYYY Reporting period 4 (dd/mm/yyyy - dd/mm/yyyy)	Amount: 000,000.00	000,000.00
Year: YYYY Reporting period 5 (dd/mm/yyyy - dd/mm/yyyy)	Amount: 000,000.00	000,000.00
Year: YYYY Reporting period 6 (dd/mm/yyyy - dd/mm/yyyy)	Amount: 000,000.00	000,000.00
Total:	000,000.00	000,000.00

The above figures are based on a subsidy rate of 100 %.

Payments not requested in time, in full or non in compliance with the procedure set in the Programme manual chapter 8.5.1. and 8.6 may be lost.

Any unjustified delay in reporting or in the clarification process of the progress report, either by LP or by Project Partners, can imply a reduction of the subsidy or a stopping of the subsidy payment.

5. Progress reports will be monitored by the Managing Authority, through the Coordination Unit, according to the procedure listed in chapter 8.7 of the Programme Manual. After the approval of the report by the MA (through the Coordination Unit), the Certifying Authority will transfer the subsidy request to the LP, within a maximum of three months from the end of the monitoring phase. The funds will be disbursed in Euro (€) only and transferred to an account indicated by the LP. Any exchange rate risk will be borne by the LP.
6. The Certifying Authority ensures that the LP receives payments of the approved contribution from the Programme in time and in full. According to § 6.15 of the Agreement, no deduction shall be made, with the exception of irregularities and/or suspicion of irregularities detected by the MA (through the Coordination Unit) and/or the Certifying Authority. If in the monitoring phase of the project the MA, the

Coordination Unit or the Certifying Authority should detect any irregularity and/or if suspicion of irregularity should arise, the MA, Coordination Unit and Certifying Authority are entitled to reduce the funding to the project.

7. According to § 2.6 and § 6.15 of the Agreement, in case of systemic error detected, the MA and Certifying Authority have the right to temporarily withhold payments to a particular beneficiary or to all beneficiaries of one particular Member State and/or Partner State should the system error be the consequence of a failure of the Member State and/or Partner State control system. Payment suspension(s) shall be lifted as soon as the MA and Certifying Authority receive sufficient evidence on the solution of the systemic error(s) detected.

§ 6

Obligations of the Lead Partner

In addition to the obligations of the LP as already stated, the LP undertakes:

- a) to start and implement the project according to the application form approved by the Monitoring Committee and its annexes;
- b) to timely inform the MA if project costs are reduced, if the project objectives, the activities or the budget plan on which this contract is based change, or one of the disbursement conditions ceases to be fulfilled, or circumstances arise which entitle the MA to reduce payment or to demand repayment of the subsidy wholly or in part;
- c) to timely inform the MA if the LP or one of the Project Partners as private partner becomes insolvent and / or is moving towards liquidation or declares bankruptcy;
- d) to comply with the regulations referred to in § 1 *Legal framework* of this contract as well as with all other European Union and national legislation including the horizontal policies of the European Union quoted in same paragraph;
- e) to submit to the MA the copies of the Partnership Agreements signed with the partners (see Programme Manual chapter 8.2.2).

§ 7

Representation of Project Partners, liability

1. According to Art. 20 of Reg. (EC) No 1080/2006, chapter IV.I.3.1 *Procedures for the selection and approval of the operations* of the Operational Programme and § 6 *Obligations of the Lead Partner* of this contract, the LP bears the responsibility listed Art. 20 (1) of Reg. (EC) No 1080/2006.
2. The LP guarantees that it is entitled to represent the Project Partners participating in the project.
3. The LP shall establish with the Project Partners the division of the mutual tasks, responsibilities and obligations in the form of Partnership Agreements, according to

§ 6.6 of the Agreement between the Member/Partner States and the Grand-Duchy of Luxembourg.

4. The LP guarantees furthermore that it has complied with all requirements under the legal framework which applies to it and to the Project Partners and that all necessary approvals have been obtained.

The LP is liable towards the MA for:

- a) Ensuring that all its Project Partners have a legal status which is in line with the definition in chapter IV.I.3.1 of the Operational Programme as it is in force on the date when this contract is signed;
 - b) Ensuring that all expenditure reported in the progress report has been validated according to the procedures set in chapter 8.6 of the Programme Manual;
 - c) Ensuring that the Project Partners fulfill their obligations under this contract and with respect of the requirements set by the legal references mentioned in § 1 *Legal framework*;
 - d) Ensuring that the Project Partners assume the responsibilities listed in Art.20 (2) of Reg. (EC) No 1080/2006;
 - e) Infringements of obligations under this contract by its Project Partners in the same way as for its own conduct.
5. If the MA demands repayment of subsidy funds in accordance with this contract, the LP is liable to the MA for the total amount of the subsidy.

§ 8 Publicity

1. Any notice or publication by the project, including at a conference or a seminar, must specify that the project has received a subsidy from the Programme funds, in compliance with the requirements set by the regulatory framework in § 1 *Legal framework*, and in particular, Articles 8 and 9 of Regulation (EC) No 1828/2006, Annex I of Regulation No 1828/2006 and the Programme Manual, chapter 8.4.6.
2. Additionally, any notice or publication by the project, including at a conference or a seminar, have to indicate that the project is supported by the Programme with a clear mentioning of the wording “*ESPON 2013 Programme*”.
3. Any notice or publication by the project, in whatever form and on or by whatever medium, including the Internet, must specify that it reflects the author's views and that the Monitoring Committee is not liable for any use that may be made of the information contained therein.
4. The MA shall be authorized to publish, in whatever form and on or by whatever medium, including the Internet, the following information:
 - a) The name of the LP and its Project Partners;
 - b) The purpose of the subsidy;
 - c) The amount of the subsidy awarded and the funding rate;

- d) The geographical location of the project;
- e) Progress reports including the final report;
- f) Whether and how the project has previously been publicized.

§ 9 Ownership of results

1. Unless otherwise provided in the subsidy contract and its annexes, ownership, title, industrial and intellectual property rights of results of the operation, reports and other documents related to the subsidy contract shall be owned by both to the beneficiary and the MA.
2. Notwithstanding the provisions of the indent 1, the beneficiary and the MA (on behalf of the MC) shall find individual arrangements in cases where the intellectual property rights (such as data acquired for the project, which do not belong to public domain) already exist and are owned by third parties.
3. The Lead Partner, acting in its own name and on behalf of the Project Partners, will not invoke any intellectual property rights, including copyrights and *sui generis* database rights, in relation to its contribution to the ESPON database.

§ 10 Right of termination

1. In addition to the right of termination laid down in § 2 *Award of subsidy* No. 3 the MA is entitled, in whole or in part, to terminate this contract and to demand repayment of funds, if:
 - a) The project has not complied with the agreed deliveries and timing;
 - b) The LP has obtained the subsidy through false or incomplete statements; or
 - c) The project has not been or cannot be implemented, or it has not been or cannot be implemented in due time; or
 - a change has occurred in the project that has put at risk the achievement of the results planned in the application form; or
 - the project outputs and results are not in line with those promised in the application form;
 - d) The LP has failed to submit required reports or proofs, or to supply necessary information, provided that the LP has received a written reminder setting an adequate deadline and explicitly specifying the legal consequences of a failure to comply with requirements, and has failed to comply with this deadline; or

- e) The LP has failed to immediately report events delaying or preventing the implementation of the project funded, or any circumstances leading to its modification; or
 - f) The LP has impeded or obstructed controls and audits (§ 12 *Controls and Audits*); or
 - g) The subsidy awarded has been partially or entirely misapplied for purposes other than those agreed upon; or
 - h) Insolvency proceedings are instituted against the assets of the LP or insolvency proceedings are dismissed due to lack of assets for cost recovery, provided that this appears to prevent or risk the implementation of the programme objectives, or the LP closes down; or
 - i) Subject to the provisions of § 15 *Assignment, legal succession*, No 2 and 3 - the LP wholly or partly sells, leases or lets the project outputs/results to a third party; or
 - j) It has become impossible to verify that the final progress report is correct and thus the eligibility of the project; or
 - k) The LP has failed to fulfill any other conditions or requirements for assistance stipulated in this contract and the provisions it is based on, notably if these conditions or requirements are meant to guarantee the successful implementation of the Programme's objectives.
2. If the MA exercises its right of termination, the LP is obliged to transfer the repayment amount to the MA. The repayment amount is due within one month following the date of the letter by which the MA asserts the repayment claim; the due date will be stated explicitly in the order for recovery.
 3. If the MA exercises its right of termination, offsetting by the LP is excluded unless its claim is undisputed or recognized by declaratory judgment.
 4. If the MA exercises its right of termination, the amount repayable shall be subject to interest, starting on the day the payment was made and ending on the day of actual repayment. The interest rate will be determined in accordance with Council Regulation (EC) No 1083/2006, Article 102(2).
 5. If any of the circumstances indicated in § 10 *Right of Termination* No 1 occur before the full amount of subsidy has been paid to the LP, payments may be discontinued and there shall be no claims to payment of the remaining amount.
 6. Any further legal claims shall remain unaffected by the above provisions.

§ 11

Archiving of documentation

1. The LP is at all times obliged to retain for audit purposes all files, documents and data about the project on customary data storage media in a safe and orderly manner until 2020 (i.e. a period of three years following the closure of the Programme), as defined by chapter 8.5.3 of the Programme Manual and in § 6.5.c of the Agreement. Other possibly longer statutory retention periods, as might be stated by national law, remain unaffected.
2. Location, conditions and support for archiving must comply with the requirements set by Article 90 of Council Regulation (EC) No 1083/2006 of 11 July 2006, by Article 19 of Reg. (EC) No 1828/2006, and by the Programme Manual, chapter 8.5.3.
3. The LP is obliged to guarantee that both the LP and all of its Project Partners fulfill the duties stipulated above.

§ 12

Controls and audits

1. Each progress reports submitted by the LP to the CU must be validated by the first level controllers, both at the LP and the PP level, according to the procedure described in the Programme Manual chapter 8.6 and in compliance with the requirements set by the legal framework in § 1 *Legal framework*.
2. The responsible 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 MA, the Certifying Authority and the Coordination Unit are entitled to audit the proper use of funds by the LP or by the Project Partners or arrange for such an audit to be carried out by authorised persons. The procedure for these controls is listed in the Programme Manual chapter 8.10.
3. The LP and the Project Partners will produce all documents required for the above controls and audit, provide and give access to all the necessary information and documents supporting the audit trail, and give access to business premises.
4. Mediation and the presumption of the good faith from the LP will be privileged.
5. The LP is obliged to guarantee that both the LP and all of its Project Partners fulfill the duties stipulated above and that these duties are included in the Partnership Agreements.

§ 13

Recovery of unjustified expenditure

1. If, as a result of the controls and audits in § 12 Controls and Audits, any expenditure is considered non eligible according to the regulatory framework mentioned in § 1 *Legal framework*, the following procedure shall apply.
2. The Managing Authority starts a recovery procedure of the non eligible amount issuing a recovery order to the Lead Partner, in compliance with the requirements set by § 10 Reduction and Recovery of payments to beneficiaries of the Agreement between the EU Member/Partner States and the Ministry of Sustainable Development and Infrastructures of the Grand Duchy of Luxembourg, Department for Spatial Planning and Development in its role as Managing and Certifying Authority of the ESPON 2013 Programme.
3. The repayment amount has to be credited to the trust account of the Certifying Authority within maximum 30 (thirty) days from the date of the communication of the recovery order. In case the Lead Partner does not comply with the set deadline, the LP will be obliged to pay interest on account of the late payment on the repayment amount.
4. If the MA demands repayment of subsidy funds in accordance to this contract, the LP is liable to the MA for the total amount of subsidy.
5. According to Art. 17 (3) of Regulation 1080/2006, if the Lead Partner does not succeed in securing repayment from a Project Partner, the Member State on whose territory the partner concerned is located shall reimburse the certifying authority for the amount unduly paid to the partner. However, if requirements set by Art. 17 (3) of Regulation 1080/2006 are due, the responsible National Authorities have then the right to recover debts from the partner on their territories according to the national applicable legislation.

§ 14

Disputes

1. If a dispute arises on the basis of non compliance with the requirements set by the present contract, the following procedure shall apply.
2. The procedure foresees the three steps for mediation, arbitration and litigation.
3. In the first instance, the parties agree that all disputes arising in connection with this agreement will be submitted to the Centre de Médiation du Barreau de Luxembourg (CMBL) ¹ and resolved in accordance with its Mediation Rules.
4. In the second instance, disputes arising out of or in connection with the present contract shall be settled under the Rules of arbitration of the Arbitration Center of

¹ <http://www.centre-mediation.lu/> CMBL 1-7, rue St. Ulric, L-2651 Luxembourg, N° de téléphone: +352 4672721, N° de fax: +352 225646 e-mail: info@centre-mediation.lu

the Luxembourg Chamber of commerce by one or more arbitrators appointed in accordance with said rules ⁽²⁾.

5. In the third instance, disputes shall be governed by the Luxembourgian Civil Code and the New Civil Procedure Code. The place of jurisdiction is the District Court of Luxembourg. The potential consequences of going through a litigation procedure are the ban on seeking further funding within the programme until the dispute has been settled.
6. The rate of the late interest applied to the amount to be recovered will be calculated in accordance with Council Regulation (EC) No 1083/2006, Article 102(2).

§ 15

Assignment, legal succession

1. The MA is entitled at any time to assign its rights under this contract. In case of assignment the MA will inform the LP without delay.
2. The LP is allowed to assign its duties and rights under this contract only after prior written consent of the MA and the Monitoring Committee.
3. In cases of legal succession, e.g. where the LP or a Project Partner changes its legal form, the LP or Project Partner is obliged to transfer all duties under this contract to the legal successor. The LP shall notify the MA about any change beforehand. The Monitoring Committee will be notified by the MA.

§ 16

Concluding provisions

1. All correspondence with the MA under this contract must be in the English language.
2. All correspondence with the MA must be in writing, in English language and must be sent to the following address:

Ministry of Sustainable Development and Infrastructures
of the Grand Duchy of Luxembourg,
Department for Spatial Planning and Development
Director Romain Diederich
Managing Authority of the ESPON 2013 Programme
1, Rue du Plébiscite
L-2341 Luxembourg
Phone: +352-478-6934 / Fax: +352-408970
Email: thiemo.eser@mat.etat.lu

² Centre d'arbitrage, 7, Rue Alcide de Gasperi L-2981 Luxembourg Tel : +352 42 39 39 300, Fax : +352 42 39 39 800 e-Mail arbitrage@cc.lu Rules of Arbitration www.cc.lu/docdownload.php?id=320 and Arbitration agreement www.cc.lu/docdownload.php?id=323

3. A copy of all documents must as well be sent in electronic form and, if not possible, as a paper copy to the Coordination Unit of the ESPON.

ESPON Coordination Unit
Attn.: Director Mr. Peter Mehlbye
70, rue de Luxembourg
L-4221 Esch-sur-Alzette, Luxembourg
Postal address : CRP HT – BP 144
L-4221 Esch-sur-Alzette, Luxembourg
Tel: +352-54 55 80-700
Fax: +352-54 55 80-701
Email: info@espon.eu

4. If any provision in this contract should be wholly or partly ineffective, the parties to the contract undertake to replace the ineffective provision by an effective provision which comes as close as possible to the purpose of the ineffective provision.
5. Amendments and supplements to this contract and any waiver of the requirement of the written form must be in written form.
6. This contract is governed by Luxembourgian law.

Luxembourg,
Date:

Place:
Date:

.....
Name and function
Ministry of Sustainable Development
and Infrastructures of the
Grand Duchy of Luxembourg,
Managing Authority of the
ESPON 2013 Programme

.....
Name and function
Lead Partner

.....
Signature + Stamp

.....
Signature + Stamp

Annexes

Annex I Approved Application form and its annexes

Annex II Resubmitted Application Form and its annexes

Annex III Annex to the Contract **Contract number**

Annex IV Specification ESPON Applied Research Project **Project number**

ESPON Subsidy Contract **XXX/YYYY**