**INTERREG ATLANTIC AREA**

**WRITTEN AGREEMENT CONCERNING THE PARTICIPATION OF ORGANIZATIONS FROM COUNTRIES LOCATED OUTSIDE THE ELIGIBLE AREA**

**number, title of the project and acronym**

The Atlantic Area Programme supports cooperation between project partners located outside the programme eligible area as established in Article 70.2 of the Regulation (EU) No 1303/2013:

*“The Managing Authority may accept that an operation is implemented outside the programme area but within the Union, provided that all the following conditions are satisfied:*

1. *the operation is for the benefit of the programme area;”*

Based on Article 20.2(b) of the Regulation (EU) No 1299/2013, 20% of the overall Programme funding may also be used for partners outside the INTERREG Atlantic Area Programme, if it is demonstrated that they bring the following to the project:

* Additional expertise that cannot be found within the Programme area;
* Justification on the need to involve a partner outside the Programme area;
* Clear benefits to be achieved on the involvement of partners outside of the Programme area.

The Managing Authority (MA) is responsible for drafting, approving and obtaining the relevant signatures of this agreement, which must happen prior to the Subsidy Contract signature with the Lead Partner (LP).

The MA is responsible for monitoring the ERDF allocation outside the eligible Programme area which may not exceed 20 % of the total ERDF Programme contribution, pursuant to Article 20 of Regulation (EU) No 1299/2013.

Should the activities to be carried out by partners (PP) located in a Member State outside the Programme area be considered as state aid relevant, the participation of these partners will not be allowed due to the impossibility for the Programme Monitoring Committee (MC) to validate the result of the state aid assessment on behalf of a Member States (MS) not participating in the Programme.

This agreement is established on basis of the rules governing the participation on the Atlantic Area Cooperation Programme by entities located in <Country> and ensuring the legality and regularity of co-financed expenditures.

Between

Comissão de Coordenação e Desenvolvimento Regional do Norte, acting as Managing Authority (hereinafter “MA”) of the European territorial cooperation programme "Interreg V B Atlantic Area", located in Rua Rainha D. Estefânia 251 – 4150-304, Porto, Portugal, tax identification number 600074404, represented by its President,

and

<“NameOrganisation”>; located in <“AddressOrganisation”>, <“PostCode” “City”, “Country”>, represented by <“NameSurnameLegalRepresentative”>, with the tax identification number <“TaxIdentificationNumber”>.

is concluded on the basis of :

**Article 1 - Legal Framework**

* The European Structural and Investment Funds Regulations, Delegated and Implementing Acts for the period 2014-2020, especially Article 125(3) c) of the Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 and Article 12 (5) of the Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 as further specified below.
* The European Territorial Cooperation Interreg Atlantic Area Programme, approved by the European Commission on 17 November 2015 (Decision No C (2015) 8196 final) setting the Programme strategy (hereinafter referred to as AA Programme).

Also the following laws and documents constitute the legal framework applicable to the rights and obligations of the parties to this contract:

* Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 together with related Delegated or Implementing Acts;
* The European Structural and Investment Funds Regulations, Delegated and Implementing Acts for the period 2014-2020, especially:
* Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 and any amendment (in particular article 70.2);
* Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006, and any amendment;
* Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal and any amendment (see in particular article 20);
* Implementing and Delegated Acts, especially Commission Delegated Regulation (EU) No 481/2014 of 4 March 2014 (in particular Article 5) supplementing Regulation No 1299/2013 of the European Parliament and of the Council with regard to specific rules on eligibility of expenditure for cooperation programmes and any amendment;
* Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, Delegated and Implementing acts as well as all applicable decisions and rulings in the field of state aid.
* All other EU legislation and the underlying principles applicable to the LP and its PPs, including the legislation laying down provisions on public procurement, on competition and entry into the markets, the protection of the environment, the equal opportunities between men and women.
* All Manuals, Guidelines and any other documents relevant for project implementation (e.g. Programme Manual) in their latest version as published on the programme website.
* The management, financial and control systems implemented by the AA Programme.

In case of amendment of the above mentioned legal norms and documents, and any other documents of relevance the latest version shall apply.

**Article 2 – Subsidy Award**

Based on the latest version of the application form (hereinafter referred to as PAF- Project Approved Form) and the amending documents, in accordance with the decision of the Programme MC and possible amending decisions, an earmarked subsidy is awarded to the <“country”>.

**Maximum ERDF amount of funding awarded:**

**TOTAL BUDGET**

|  |  |
| --- | --- |
| ERDF | € |
| Total Costs | € |

The country ensures that the compliance of legal rules and regulations regarding <“partner Nº and organization”> financing has been checked.

The final ERDF amount to be awarded is conditioned to the work plan implementation as presented in the Project Approved Form (PAF) and will be calculated based on paid and duly certified expenditures, after deduction of eventual incomes, generated and received.

Considerable underspending of ERDF by the partner could lead to a decommitment procedure that shall be approved by the Programme MC.

Programme co-financing to this partner can only be available after this Agreement signature. The management, financial and control systems of the country where the project partner is located must be presented. The document should define, in particular, the provisions on financial control of expenditure.

**Article 3 – Object of use and eligibility of costs**

1. The subsidy is awarded exclusively for the project as described in the latest version of the PAF in accordance with the conditions set out by the MC. The PAF and its annexes, as approved by the MC, form an integral part of this contract.
2. Disbursement of the subsidy is subject to the condition that the European Commission makes the funds available. In case of non-availability of funds the MA cannot be deemed responsible for late or missing payments.
3. If the European Commission fails to make the funds available due to reasons that are outside of the sphere of influence of the programme, the MA is entitled to terminate this agreement and any claim by the partner against the MA for whatever reason is excluded. In such a case the country and partner will be duly notified by the MA and guided on the respective steps to be taken.
4. The country accepts the Agreement and undertakes to carry out the partner activities in the project under its own responsibility as laid out in the European Structural and Investment Funds Regulations, delegated and implementing acts or the programme rules based thereon.
5. Should it become evident that the partner will not spend the maximum amount of ERDF-co-financing awarded, the MC may decide to reduce it.
6. Budget disbursement is subject to the condition that this Agreement is signed by the both parties.
7. The non-compliance with the relevant rules could lead the programme authorities to take corrective measures and exclude from the project budget ineligible expenditure.

**Article 4 – Project and Agreement duration**

1. The Project start date is the date of notification of MC’s approval by MA/JS. The project has a duration as provided for in the latest version of the PAF.
2. This Agreement enters into force on the date of signature by both parties and is valid until the declaration of closure of the project by the MA.
3. Without prejudice to the provision regarding the project implementation and the eligibility of expenditure as well as to the rules governing State Aid, this Agreement expires in accordance with obligations on availability of documents as defined in Article 140 of Regulation (EU) No 1303/2013.

**Article 5 – Payments**

1. The funds will be disbursed in Euro (EUR; €) only. Any exchange rate risk will be borne by the partners. The subsidy will be transferred to the account as indicated by the LP in the PAF. Whenever possible, the account should be of specific project use or with an adequate accounting code. They must be verified by a first level controller in accordance with Regulation (EU) no 1303/2013.Article 125(4).
2. By paying out the subsidy according to this Agreement, the MA fulfils its obligations resulting from it.
3. Country and partners are aware that payments not requested on time and in full or non in compliance with the payment schedule, as indicated in Project progress reports, may be lost, according with the procedures established in the Programme Manual.

**Article 7 – Expenditure Validation**

1. The country notifies the MA, the persons or institutions performing the control activities and ensures that they were selected in accordance with the system set up and meet the requirements of qualification and independence.
2. Changes of address, changes of account number and changes of control authority/institution or name of controller(s) have to be duly notified following the procedure laid out in the Programme Manual for project changes.

**Article 8 – Changes**

Changes in budget allocations per budget lines, work packages and partner as well as changes in activities/outputs and project duration are allowed as long as the maximum amount of funding awarded is not exceeded, if provisions related to State Aid discipline are respected and if they follow the conditions and procedures as set out in the Programme Manual.

**Article 9 – Project Partners representation,**

1. “Project Partners” are the organisations listed as such in the latest PAF version. Only expenditure incurred and paid by the PPs are eligible for ERDF co-financing, with the exception of expenditure calculated as lump sums or on a flat rate basis.
2. If the MA demands repayment of allocated funds to the LP, and in case the MA does not succeed in securing repayment from the LP, Article 27 of Regulation (EU) No 1299/2013 applies.
3. The MA cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of partners while the project is being carried out. Therefore the MA cannot accept any claim for compensation or increases in payment in connection with such damage or injury.

**Article 10 – Project Management**

1. In compliance with Article 65 (11) of Regulation (EU) No 1303/2013 the partner ensures that expenditure items included in requests for reimbursement do not receive support from the same or any other EU Programme, EU fund or Union instrument.
2. In line with Article 13 (2) lit. c and d of Regulation (EU) No 1299/2013 the partner insures that expenditures have been controlled and verified and used for the project purposes as set out in the PAF.
3. Financial controllers of each partner are chosen by each beneficiary and validated by the respective Member State, before the submission of the first Progress report and expenses claim. It should also ensure partners located in a country not covered by the Atlantic Area (inside or outside the European Union).
4. In accordance with Articles 56 and 57 of Regulation (EU) 1303/2013 the partner undertake to provide experts or bodies authorised by the Interreg AA Programme carrying out project evaluations and/or studies with any document or information requested for evaluation purpose. Information might be provided by the partner or also through surveys and/or interviews.
5. (for State Aid relevant projects)

The country ensures that, in case of aid granted under the *de minimis* regime, the partner will respect all necessary requirements provided for in Regulation (EU) No 1407/2013 and will ensure their respect, when necessary, by those bodies benefitting of project activities/outputs.

**Article 11 – Financial Controls, Audits**

1. The European Commission, the European Anti-Fraud Office (OLAF), the European Court of Auditors (ECA) and, within their responsibility, the auditing bodies or other national public auditing bodies as well as the Programme Audit Authority (AA), the MA or CA and the JS are entitled to audit the proper use of funds by the partner/Country or to arrange for such an audit to be carried out by authorized persons. The partner will be notified in due time about any audit to be carried out on their expenditure.
2. The partner undertakes all the necessary actions to comply with the fundamental requirements, the applicable laws and programme documents (e.g. Programme Manual), to provide for comprehensive documentation on compliance with those norms and the accessibility to this documentation. Besides the obligations with regard to reporting and information, the LP particularly:
   1. Keeps all documents and data required for controls and audits safely and orderly as further specified in Article 10 of this Agreement;
   2. Makes all necessary arrangements to ensure that any audit, notified by a duly authorized institution can be carried out smoothly, and
   3. Provides any requested information to these institutions about the project and gives access to their business premises, provides and gives access to all the information and documents supporting the audit trail as requested in the European Structural and Investment Funds Regulations, Delegated and Implementing Acts and the Programme Manual.
3. If, as a result of the controls and audits any expenditure is considered non eligible according to the regulatory framework of this Agreement, the procedure described in Article 12 and Article 5 (4) of this Agreement shall apply.
4. The management and control system set up in <Country> shall be sufficiently detailed and comply with the European Commission “Guiding Rules for the Implementation of Member States Control Systems” and the MA Description of Management and Control System, in order to ensure that the information sent to the MA is enough to validate the adequacy of administrative and on-the-spot verifications, the legality and regularity of expenditures and the treatment of irregularities detected and corrective measures adopted.
5. The rules concerning the accounting records of operations and audit trails shall be described in detailed in the Management and Control System Procedures Manual of <Country> which is attached to this protocol.
6. The <Country> designates through its Management and Control System Procedures Manual the control bodies in charge of verifying the legality and regularity of expenditures declared by partners located in its territory.
7. Furthermore, the Management and Control System Procedures Manual of <Country> describes, according to the European Commission “Guiding Rules for the Implementation of Member States Control Systems” as defined in the MA Description of Management and Control System, the system of control adopted, how is ensured the separation of functions, the procedures used for the administrative and on-the-spot verifications, the procedures for reimbursement claims, the treatment of irregularities and recoveries and the supervision and control of quality of first level verifications.
8. Any irregularities concerning partners located in <Country> shall be reported to the MA by the national responsible entity.
9. The <Entity subscribing the protocol> agrees to assist the AA on carrying out the audit procedures covering the co-financed operations participated by partners located in its territory.
10. The body in charge of carrying out the audit procedures of partners located in <Country> is the External Controller, designated by the <Country> partner, under approval of <Country> <Entity subscribing the protocol>. The expenditure controlled shall be subject to a quality control carried out by <XXXXXXXXXXXXXXXXXXXXXXXXX> being guaranteed its independence regarding the first level control of operations.

**Article 12 – Withdrawal or Recovery of Funds**

1. In case the MA or Certifying Authority (CA) discover (e.g. during the day-to-day management or during on-site checks) any unduly paid out funds, e.g. due to administrative errors or irregularities, a breach of contract or infringement of the legal provisions as laid out in Article 1 of this document, or in case the MA is notified of such cases, the MA or CA shall, if necessary in consultation with the respective MS concerned and by informing the MC, demand the repayment of the subsidy in whole or in part.
2. The amount to be repaid can be withdrawn from the next payment or, where applicable, remaining payments can be suspended. In case of closed projects, the Lead Partner is obliged to transfer the unduly paid-out funds to the MA or CA. The repayment amount is due within one month following the date of receiving the notification by which the MA asserts the repayment claim; the due date will be stated explicitly in the order for recovery. In case of e-mail correspondence the relevant date shall be the date of sending the e-mail.
3. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of the late interest applied to the amount to be recovered will be calculated in accordance with Article 147 of Regulation (EC) No 1303/2013.

**Article 13 – Publicity, Communication and branding**

Unless the MA requests otherwise, any notice or publication made by the project including presentations at conferences or seminars, shall point out that the present project was implemented through financial assistance from ERDF funds of the AA Programme as required by Annex XII to Regulation (EU) 1313/2013. All information, communication and branding measures of the project shall be carried out in accordance with the aforementioned rules, the latest version of the PAF, the Programme Manual and any other guidelines that could be issued by the Programme on the matter.

**Article 14 – Ownership / Use of Outputs**

1. Ownership, title and industrial and intellectual property rights in project results and reports and other documents relating to it shall, depending on the applicable national law and/or the Partnership Agreement, vest in the LP and/or its PPs. The partnership is entitled to establish the property rights of the products deriving from the project.
2. The ownership of outputs having the character of investments in infrastructure or productive investments realised within the project must remain with the concerned partner according to the timeframe as well as under the conditions set in Article 71 of Regulation (EU) No 1303/2013. Should any of the conditions set by the mentioned Regulation not be met at a certain point of time, the MA/JS must be immediately informed by the partner. The MA will recover the unduly paid ERDF contribution in proportion to the period for which the requirements have not been fulfilled.
3. The partner and country respects all applicable rules and the basic principles related to competition law as well as the principles of equal treatment and transparency within the meaning of the funding regulations and it ensures that no undue advantage, i.e. the granting of any advantage that would undermine the basic principles and political objectives of the funding regime, is given to anybody. Outputs and results, especially studies and analyses, produced during project implementation are made available to the general public free of charge and can be used by all interested persons and organizations in the same way and under the same conditions as by the LP or its PPs.
4. The MA reserves the right to use the outputs and results for information and communication actions in respect of the Programme. In case there are pre-existing intellectual and industrial property rights which are made available to the project, these are fully respected.
5. Any income generated by the intellectual property rights must be managed in compliance with the applicable EU, national and programme rules on-revenues and State Aid.

**Article 15 – Revenues generation**

Revenues generated during the project implementation through the sales of products and merchandise, participation fees or any other provisions of services against payment must be deducted from the amount of costs incurred by the project in line with Art 61 of Regulation 1303/2013 and stipulations in the Programme Manual. The LP undertakes to contractually forward these stipulations to its project partners.

**Article 16 – Assignement, Legal Succession**

1. The MA is entitled at any time to assign its rights under this Agreement. In case of assignment the MA will inform the country without delay.
2. Where according to national laws the legal personality does not change and where all assets of the partner are taken over so that a deterioration of the financial capacity of the acquiring institution is not to be expected (i.e. in cases of universal succession) prior consent by the MC is not necessary. The partner, however, will submit related information together with all documents that are necessary to analyse the legal case in due time to the MA/JS. If the MA/JS comes to the conclusion the conditions as stated above are not fulfilled (e.g. in cases of a singular succession), the partner will be informed that a partner change procedure has to be initiated.

**Article 17 – Penalties**

1. In addition to the right of termination as laid down in Article 3 the MA is entitled, in whole or in part, to terminate this Agreement and/or to demand repayment of the subsidy in any of the following circumstances:
2. The partner has obtained the subsidy through false or incomplete statements or through forged documents;
3. The partner received additional funding from the European Union for all or part of the project expenditure reported under the Programme during the period of the implementation of the project;
4. The project has not been or cannot be implemented, or it has not been or cannot be implemented in due time;
5. The partner obstructed or prevented the financial control and auditing as indicated in Article 11 of this contract;
6. The amount of funding awarded has been partially or entirely misapplied for purposes other than those agreed upon;
7. Insolvency proceedings are instituted against the assets partner or insolvency proceedings are dismissed due to lack of assets for cost recovery or the partner closes down or liquidates, provided that this appears to prevent or risk the achievement of the project objectives;
8. Exceeding the permissible limits of the funding regulations (e.g. Article 61 of Regulation (EU) No 1303/2013), the LP wholly or partly sells, leases or lets the project outputs/results to a third party;
9. Regulations of EU-law including the horizontal policies or national regulations have been violated;
10. The ownership of project outputs having the character of investments in infrastructure or productive investments did not remain with the concerned partner for the timeframe and under the conditions set in Article 71 of Regulation (EU) No 1303/2013;
11. The partner is in the situation of undertaking in difficulty, within the meaning of point 24 (in conjunction with point 20) of the “Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty” (Communication from the Commission No. 2014/C 249/01 of 31.07.2014) as well as in compliance with Article 3(3) d) of Regulation No 1301/2013.
12. As laid out in Article 3.3, the MA is entitled to terminate the Subsidy Contract of the project if the European Commission fails to make the funds available due to reasons that are outside of the sphere of influence of the programme which, consequently, terminates this Agreement as well.
13. Any further legal claims shall remain unaffected by the above provisions.

**Article 18 – Force majeure**

1. Neither party shall be liable for any failure of its Agreement obligations if the fulfilment of such obligations have been impeded due to any case of force majeure occurring after the date of its signature by the Managing Authority, or the date of the beginning of operations, whatever happens first.
2. For the purposes of this Agreement, the following are examples of “cases of force majeure” strikes, lock-outs or other labour disputes, acts of terrorism, situations of war, blockades, insurrections, riots, epidemics, natural cataclysms, explosions and any other unforeseeable event that the parties cannot avoid or overcome.
3. The “Force Majeure” exonerates the parties to execute partially or totally their obligations stipulated in the present Agreement during the period in which they occur and when properly notified.

**Article 19 – Applicable Law and Dispute Settlement**

1. Without prejudice to the applicable European law, this Agreement shall be governed by the Portuguese law. Thus, the laws of Portugal shall apply to all legal relations arising in connections with this agreement.
2. In case of disputes between the MA and the country, presumption of the good faith from the country will be privileged and, prior to litigation, mediation procedures shall be set in place.
3. In case of litigation, venue is the Administrative and Fiscal Court of Oporto which has the jurisdiction and is competent to resolve all issues arising from the implementation of this Agreement.

**Article 20 – Concluding Provisions**

1. In all matters that are not explicitly covered in this Agreement, the European Community and national legal provisions will be applied.
2. Any communication within the context of this Agreement shall be made in writing, mentioning the project number and title, through the Programme website.
3. When, for some unexpected reason, it is not possible to comply with the stipulation in the previous paragraph, the communication will be made through other legally admitted means without prejudice of subsequent recording in the Website of the Programme.
4. Done in two originals, in the English language, one for the Managing Authority and one for the country.

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| --- | --- |
| Done in \_\_\_\_\_\_\_\_\_\_\_ , on the \_\_\_\_\_\_\_\_\_\_\_\_\_  (place) (date)  Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Job Title:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Stamp if available) | Done in Porto, on the\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_  Managing Authority Representative  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Stamp) |

Annexes:

* + Project Approved Form (PAF) and appendices as mentioned in the Programme Manual;
  + Programme Manual;
  + Management and Control System Procedures Manual of <Country>;
  + Interreg AA Cooperation Programme.