

EUROPEAN TERRITORIAL COOPERATION 2007-2013

"ALPINE SPACE" OPERATIONAL PROGRAMME

**Partnership Agreement
for the project
" "**

Article 1

Definitions

For the purposes of the present partnership agreement the following terms shall have the meanings assigned to them here:

- (a) Lead Partner: the project partner who takes the overall responsibility for the application and the implementation of the entire project (corresponds to the term "lead beneficiary" used in the EU-regulations on structural funds and is hereinafter referred to as "LP").
- (b) ERDF-Lead Partner: the project partner who takes the overall responsibility for the financial management of the ERDF-funds granted to the project, esp. financial monitoring, accounting and financial reporting in case the LP is coming from a Non Member State (hereinafter referred to as "ERDF"-LP).
- (c) Project partner: all the other partners participating in the project and contributing to its implementation according to the project application form (corresponds to the term "beneficiary" used in the EU-regulations on structural funds and hereinafter referred to as "PP").
- (d) Project participants: LP, ERDF-LP and PP.
- (e) Project observers: actors that do not contribute to the implementation of the project in terms of financial contributions, but are invited by the project participants to take part in the project in an observant role respectively advisory capacity.

Article 2

Object of the Partnership Agreement

- (1) The present partnership agreement shall lay down the arrangements for the relations between the project participants in order to implement the transnational project " " successfully and in compliance with the description of the project as set out in the project application form as well as with the conditions set out by the EU-structural funds regulations and the programme for receiving the subsidy.

- (2) The EU-structural funds regulations lay down the common principles, rules and standards for the implementation of projects in structural funds programmes. The provisions of the programme are outlined in the operational programme and specified in the programme implementation handbook. The model subsidy contract which will be used by the Managing Authority (hereinafter "MA") when entering into the contract with the LP and ERDF-LP sets out the standardised conditions under which the programme grants the subsidies to the selected projects. In the project application form which is attached to the present agreement and forms an integrated part of it the above-mentioned project and the contributions of all project participants thereto are described in detail.
- (3) Each of the project participants acknowledges all above-mentioned documents (EU-structural funds regulations, operational programme, programme implementation handbook, project application form, model subsidy contract) as binding on itself.
- (4) The present partnership agreement serves also explicitly as written power of attorney of the PP to LP and ERDF-LP and authorises the latter to perform the specific duties and responsibilities as set out below.

Article 3

Duration of the Agreement

The present partnership agreement shall come into force upon signature by all project participants and under the condition that the project is selected for co-funding by the Programme Committee. It shall remain into force until the LP and ERDF-LP have discharged in full their obligations towards the MA (i.e. at least until end of 2022).

Article 4

Obligations of the Lead Partner and ERDF-Lead Partner

- (1) The LP shall be responsible for the overall coordination, management and implementation of the project.
- (2) In particular, the LP shall:

- a) ensure a professional management of the project according to the respective standards for professional project management,
 - b) ensure timely commencement of the project and implementation of all activities in accordance with the time schedule of the project,
 - c) ensure a sound financial management of the project,
 - d) ensure appropriate information and publicity measures,
 - e) forward to the PP copies of official documents related to the project (such as signed subsidy contract, progress reports) and keep the PP informed on a regular basis about all relevant communication between LP and MA respectively Joint Technical Secretariat (JTS),
 - f) inform the project partners about all essential issues related to the project implementation without any delay,
 - g) ensure that the project is implemented in compliance with the relevant regulations of the European Union and the applicable national legislation, especially structural funds regulations and regulations concerning equal opportunity, environment, competition and public procurement,
 - h) be responsible for the correct use of the national public and ERDF-funds received for the project,
 - i) fulfil all obligations as set out in the subsidy contract.
- (3) Since the tasks and responsibilities of the LP are assumed by a project participant coming from a Non Member State the project participants have nominated one of them that comes from a Member State to act as ERDF-LP. This ERDF-LP shall assume all tasks and duties as set out in the EU-structural funds regulations, the operational programme, the programme implementation handbook, the present agreement and the subsidy contract related to the financial management of the ERDF-funds granted to the project. The LP and ERDF-LP will closely cooperate in performing their tasks. Both of them will sign the subsidy contract with the MA, both of them bear the responsibility for the entire programme towards the MA and both of them will commonly monitor the project implementation and report on it.

Article 5

Obligations of the Project Partners

- (1) The project partners respect all the rules and obligations set forth in the present agreement and the conditions under which the programme grants the subsidies to the selected projects.

- (2) They commit themselves to do everything in their power to contribute to the implementation of the project as set out in the project application form.
- (3) The project partners shall support the LP and ERDF-LP to fulfil their tasks according to the subsidy contract.
- (4) In particular, each PP shall:
 - a) provide the LP and ERDF-LP without any delay with any information needed to coordinate and monitor the implementation of the project, for reporting purposes and to react on any requests of the programme;
 - b) confirm that the national co-funding is ensured as stated in the application form;
 - c) inform the LP and ERDF-LP immediately about any circumstance that may adversely affect the implementation of the project in accordance with the project application,
 - d) ensure timely commencement and implementation of its project activities in accordance with the time schedule of the project,
 - e) ensure timely reporting on its activities and costs in accordance with the time schedule of the project,
 - f) ensure appropriate information and publicity measures under co-ordination of the LP,
 - g) comply with the relevant regulations of the European Union and the applicable national legislation, especially structural funds regulations, equal opportunity, environment, competition and public procurement law,
 - h) be responsible for the correct use of the national public and ERDF-funds received for the project,
 - i) inform the Member State where it is located about its participation in the project in case this Member State is not participating in the programme (and where the programme makes use of the possibility to spend ERDF-funds outside the co-operation area) without any delay.

Article 6

Organisational Structure of the Partnership

- (1) For the successful management and completion of the project a Project Steering Group (hereinafter "PSG") shall be set up.
- (2) The Project Steering Group shall be composed by competent representatives of all project participants and shall be chaired by the LP. It shall meet on a regular basis. Project observers shall be invited to take part in the PSG in an advisory capacity.
- (3) The Project Steering Group shall:

- (a) be responsible for monitoring the implementation of the project,
 - (b) be responsible for settlement of any disputes among project participants,
 - (c) have the possibility to set up sub-groups respectively workgroups to deal with specific tasks related to the project.
- (4) Further aspects may be set out in the rules of procedure of the PSG.

Article 7

Co-operation with Third Parties

- (1) In case of co-operation with third parties the respective project participant shall remain solely responsible to the other project participants concerning compliance with its obligations as set out in this partnership agreement. The project participants shall inform each other about the subject and party of any contract concluded with a third party in respect of the project.
- (2) The project participants herewith declare to obey the rules on public procurement of the state/region they are situated in.
- (3) No project participant shall have the right to transfer its rights and obligations under this agreement to a third party without the prior consent of the other project participants and the responsible programme bodies (Programme Committee respectively MA). This approval shall be granted by the project participants and the programme bodies (by the latter unless otherwise stipulated by the programme rules) if such third party offers the same guarantee as the transferring project participant for the fulfilment of its rights and duties related to the project as laid down in the present agreement. In this case the transferring project participant is obliged to assign all rights and obligations and all project related documents to each and any legal successor. This provision shall also apply in case of a change of the legal form of the respective project participant.

Article 8

Financial Management

- (1) To ensure a sound financial management of the project each project participant shall:

- (a) install separate accounts or adequate bookkeeping systems for the financial settlement of the project that safeguard that the expenditure and the revenues as well as the received national public and ERDF-funds related to the project are clearly shown,
 - (b) strictly follow the eligibility rules set up by the programme respectively the national rules if such exist and are stricter than the programme rules.
- (2) The LP and ERDF-LP shall furthermore:
 - (a) constantly monitor the exhaustion of the project budget foreseen for each project participant and ensure that budget shifts are carried out within the limits and according to the rules as set out by the programme,
 - (b) ensure that the expenditures made by the project participants have been used for the purpose of implementing the project and correspond to the activities agreed between the project participants and set out in the project application form.

Article 9

Reporting

- (1) The LP and ERDF-LP may only request ERDF-payments for the project by presenting progress reports to the JTS and the MA. Furthermore, the LP and ERDF-LP might be asked by the programme implementing bodies (MA or JTS) to provide for information on other aspects related to the project. To this end, each project partner shall provide LP and ERDF-LP with all information that the latter deem necessary for the preparation of progress reports and other specific documentation as requested by MA or JTS. The LP and ERDF-LP shall automatically send copies of any report and documentation to be sent to MA or JTS to all project partners and keep them informed about all relevant communication with MA or JTS (see also article 4 par. (2) lit e).
- (2) After the progress reports have been checked by JTS and MA the respective ERDF-funds will be transferred to the account of the ERDF-LP by the Certifying Authority. The ERDF-LP shall forward the ERDF-funds to the project partners in accordance with the information provided by the MA and without any delay. In case the delay is imputable to the ERDF-LP the project partners may claim usual interest rates which the ERDF-LP must not pay from the approved project budget.

Article 10
First Level Control, Audits

- (1) All project expenditures to be ERDF co-funded must be certified by the responsible national authority or private institution, depending on the national organisation of the "first level control" in the respective Member State.
- (2) In case of ERDF-co-funding of expenditure incurred related to activities set on the territory outside the European Community the project participant that is responsible for these activities according to the project application form will also have these expenditures certified by its first level control body. In case of ERDF-co-funding of expenditure incurred by project participants located outside the co-operation area of the programme these project participants will have their costs validated by the first level control body that has been authorised by the state the respective project participant is situated in.
- (3) Each project participant shall get in touch with its first level control body as early as possible to clarify which documents are needed by this body to perform its task. The project participants shall furthermore enable the first level control body to audit the proper use of funds.
- (4) With regard to audits that will be carried out in addition to the first level control (by auditing bodies of the European Union, the programme or authorised authorities of the state the project participant is situated in), each project participant shall:
 - a) keep available all files, documents and data related to the project for a period of three years following the closure of the programme (i.e. at least until end of 2022), either in original or as certified copies on commonly used data media safely and orderly,
 - b) make all necessary arrangements to ensure that any audit, notified by the duly authorised authority, can be carried out smoothly,
 - c) give these authorities any information about the project they request and give them access to the accounting books, supporting documents and all other documentation related to the project.
- (5) National regulations on audits and retention of data and records that are binding for the project participant shall remain applicable provided that such entail more stringent obligations.
- (6) The provisions set out above remain applicable to the project participant that withdraws or is debarred from the project.

Article 11
Copyrights, Project Results,
Information and Publicity Measures

- (1) All project outcomes and results shall be the joint property of all project participants. Consequently, each project participant shall grant a simple, non-exclusive right of use of any produced work of authorship to all other project participants.
- (2) The project participants take note of the fact that the results of the project, especially any study or analysis produced in the course of the project, shall be made available to the public whereby the appropriate way of publication will be laid down in the programme implementation handbook. Moreover, the project participants shall play an active role in any action organised by the programme to disseminate and capitalise on these results.
- (3) The project participants shall implement the information and publicity measures in accordance with the provisions of the EU-structural funds regulations, the programme implementation handbook and the project application form. These activities shall be coordinated by the LP.

Article 12
Defaults and Remedies

- (1) Each project participant is directly and exclusively responsible to the other project participants for the due implementation of its respective contribution to the project and for the proper fulfilment of its obligations as set out in this agreement. Should a project partner not fulfil its obligations under this contract in due time, the LP and ERDF-LP shall admonish it to fulfil them within a reasonable period of time, one month at the maximum. Should the non-fulfilment continue, the LP and ERDF-LP may decide to debar the project partner concerned from the project with approval of the other project partners. The MA and JTS shall be informed in advance of such an intended decision. The excluded project partner is obliged to repay to the ERDF-LP any ERDF-funds received for the project of which it is unable to prove that they were used for activities and investments which were of benefit for the project and can be used during further implementation of the project. The excluded project partner is liable to compensate any damage to the remaining project participants due to its exclusion.

- (2) All project participants herewith oblige themselves to compensate each other for those damages that may result from intentional or gross negligence non-performance or malperformance of any of their obligations under the present agreement.
- (3) In case the Programme Committee decides in the light of the decommitment-rules that ERDF-funds allocated to the project shall be reduced the project participants herewith agree that the deduction shall be imputed to the project participants that have contributed to it by not reporting according to the time schedule of the project unless a different decision is taken by the PSG.
- (4) If the MA should – based on the provisions of the subsidy contract - request a repayment of ERDF-funds from the ERDF-LP, the latter shall ask for reimbursement the project participant that has caused or contributed to the request respectively reimburse the funds itself in case it has caused the request according to the information given by the MA. The project participant affected shall pay back the requested ERDF-funds plus the corresponding interests to the ERDF-LP and will pay back the national co-funding to the national funding bodies if and as foreseen by the co-funding regulations of the state this project participant is situated in. In the case that no project participant can be held responsible for the request for repayment, the amount requested shall be apportioned between all project participants pro rata to their project share (meaning the amount of ERDF-funds they have been granted according to the approved application form). The only exception to this rule is the case of a project participant managing a common transnational activity on behalf of the other participants. In the case that these common transnational activities are not managed according to the provisions of the programme this project participant shall be held responsible for the total managed amount of ERDF-funds plus related interests towards the MA; national co-funding will be paid back to the national co-funding bodies if and as foreseen by the co-funding regulations of the state this project participant is situated in.

Article 13

Changes in the Project Partnership

- (1) Being aware of the fact that the MA is entitled to withdraw from the subsidy contract if the number of project participants falls below the minimum number of participants a project must have according to the provisions of the programme and that a decrease of project participants could entail a lower quality of the project and thus might need a re-approval of the Programme Committee the project participants herewith agree not to back out of the project unless there are unavoidable reasons for it.

- (2) In case a project participant withdraws from the project or is debarred from it the remaining project participants will undertake to find a rapid and efficient solution to ensure the further proper project implementation without any delay. Consequently, the project participants will endeavour to cover the contribution of the withdrawing project participant, either by assuming its tasks by one or more of the present project participants or by asking one or more new partners to join the project partnership, regarding the respective programme provisions.
- (3) The LP will inform MA and JTS as soon as changes in the project partnership are foreseeable and will closely co-operate with these bodies when carrying out the respective activities to replace the former project participant. The entry of any new project participant becomes legally effective only after approval by the Programme Committee.

Article 14 **Project Data**

- (1) The project participants herewith agree that the MA is entitled to use the data which are contained in the project application form and which are acquired in the course of the project implementation and to convey these data to the organs and authorised representatives of the following bodies and authorities: first level control bodies of the programme, bodies and authorities involved in the audits, auditing bodies of the European Union, audit office of the Land of Salzburg, federal audit office, and federal ministry of finance of Austria.
- (2) Furthermore the project participants agree that their names and addresses, their activities in the project and the amount of ERDF-funds and national co-funding received for that purpose may be used by the programme bodies in the framework of information and publicity measures concerning the programme.

Article 15 **Confidentiality**

The project participants agree that any information that they obtain during the implementation of the project or communication with the programme bodies is confidential provided that the project participants or programme bodies explicitly request such.

Article 16
Language

- (1) The working language of the partnership shall be .
- (2) This partnership agreement is concluded in English. In case of a translation of this agreement into another language than English, the English version shall be the binding one.

Article 17
Concluding provisions

- (1) Amendments and supplements to the present agreement must be in written form. Consequently, these changes of the present agreement shall only be effective if they have been agreed on in writing and have been designated as amendment or supplement of the partnership agreement (the exchange of letters whereby one project participant proposes the changes to be made and all other project participants expressly agree via postal services and fax is sufficient). The LP shall notify to the MA and the JTS any envisaged amendment or supplement of the present agreement in advance to ensure that these modifications are carried out in line with the programme provisions. Modifications to the project that are approved by the responsible programme bodies (Programme Committee respectively MA) shall be effective as alterations of the present agreement, also without adherence to this formal requirement.
- (2) If any provision in this contract should be wholly or partly ineffective, the remaining provisions remain binding on the parties. The parties agree to replace the ineffective provision by one which serves the purpose of the agreement as closely as possible.
- (3) In case of differences that are not ruled by this agreement, the parties agree to find a conjoint solution.
- (4) In case of any disputes among themselves the project participants will endeavour to work towards an amicable settlement. Disputes will be referred to the PSG. If efforts to achieve an amicable solution should fail, the project participants will seek the support of the MA. In case a solution cannot be found, the parties herewith agree that shall be the venue for all legal disputes arising from this agreement.

(5) The laws of _____, being the laws of the country of the ERDF-LP shall apply to all legal relations arising in connection with this agreement.

(6) _____ copies will be made of this agreement; of which each party keeps one.

(place and date, stamp)

(name of Lead Partner)

(name of legal representative)

(place and date, stamp)

(name of ERDF-Lead Partner)

(name of legal representative)

(place and date, stamp)

(name of project partner)

(name of legal representative)