

APPENDIX III – DRAFT GRANT AGREEMENT

Ref No:
FIMS PO No.: ...
CEAD No.:

GRANT AGREEMENT BETWEEN THE COUNCIL OF EUROPE AND <Grantee>

The Council of Europe, which has its Headquarters at Avenue de l'Europe, F-67075 Strasbourg, France, represented by, acting on behalf of the Secretary General (hereinafter referred to as "the Council of Europe");

on the one hand, and

<Name and address of the Grantee>, represented by < Name of the representative and of his/her position within the administration of the Grantee> (hereinafter referred to as "the Grantee");

on the other hand,

have agreed as follows:

ARTICLE 1 - SUBJECT

1. The subject of this Agreement is the funding, for a maximum of € <sum in figures> (<sum in letters>), by the Council of Europe as payment for the expenses to be met for implementation of <title of the Activity, Place, Date> (hereinafter referred to as "the Activity") as described in Appendix I to the present Agreement.

2. The Grantee will be awarded the funding on the terms and conditions set out in this Agreement and its Appendices, which form an integral part of the present Agreement.

3. This Agreement shall enter into force on the date on which the second of the two Parties signs it. The implementation period of the Activity shall begin on <date> and shall end on <date>.

(Starting date of the implementation period cannot be earlier than the date for submission of applications, but can be earlier than the date of signature of the agreement).

4. The Grantee shall contribute to <...>% to the overall project budget, either by way of its own resources or by contribution from third parties, The overall project budget shall not exceed € <sum in figures> (<sum in letters>) Euros. The form of this contribution is detailed in Appendix I to the present Agreement.

ARTICLE 2 - OBLIGATIONS OF THE GRANTEE

1. The Grantee shall:

- a) be responsible for implementing the project, as described in Appendices I and II, in accordance with the terms and conditions of the current Agreement;
- b) be responsible for complying with any legal obligations incumbent on it;
- c) inform the Council of Europe immediately of any change likely to affect or delay the implementation of the project of which the Grantee is aware.

2. The Grantee undertakes:

- a) to use this funding exclusively for the subject as stated in Article 1;
- b) to make no profit through the Council of Europe funding;
- c) to transmit to the Council of Europe a narrative report as of [*date*] on the use made of the grant and a final narrative report by [*date*]:
- d) to transmit to the Council of Europe by [*date*]:
 - a final financial report (see Appendix III), in Euros, in English, of the payments made for the project, certified by a responsible financial officer of the Grantee, accompanied by appropriate original supporting documents¹ (the Council reserves the right to ask for a summary translation of those invoices not drawn up in English or French). If, under domestic law, the original documents must be retained by the Grantee, certified copies must be submitted with the final financial report;
 - a copy of the credit advice slip or any other document, provided by the Grantee's bank, to certify receipt of the payment of the grant;
 - where the Agreement was concluded in local currency, a certified copy, provided by the Grantee's bank, indicating the exchange rate applied on the date of conversion of the sum received into the local currency;
 - where applicable, upon request by the Council of Europe, the procurement documents referred to in Article 11.2.
- e) where the documents specified in Article 2.2 c) and d) are not received by the Council of Europe by the due date, to relinquish the right to the payment of the balance referred to in Article 3.1 b);

¹“Appropriate original supporting documents” refer to signed contracts, invoices and acceptances of work (for all transactions), payment authorisation for all transactions should also be provided in case the Grantee uses such practice, and reliable evidence of payment (authorised payment order and bank statement). As regards round tables / conferences, it implies a programme mentioning among others the title, the dates, the venue, the agenda of the event, the names of experts facilitating the event, a signed list of participants, contracts with the venue of the event (e.g. hotel) for the rent of hall, food and beverages of participants, invoices of the venue of the event for the above services, and a report on the results of the event. As regards consultancy services, it implies evidence of the outputs produced, contracts with experts and consultants containing a specific description of services to be carried out, invoices produced after the works have been performed and delivered (the specialities of the consultants shall correspond to the nature of activities for which they are contracted). As regards travel fees / lodging of experts and participants, it implies, where relevant, contracts with a travel agency for travel fees and lodging, invoices of the travel agency mentioning destinations, dates, ticket costs, and names of the travelling persons, a programme of the event mentioning the names of the experts and signed lists of participants. This list is not exhaustive. Any doubt regarding the interpretation of the notion of “appropriate original supporting documents” should lead the Grantee to consult the Council of Europe.

- f) to keep the accounts of the project, for a minimum period of ten years from the date of transmission of the narrative reports and financial statement under Article 2.2 c) and d), for any further verification of the proper use of the grant that the Council of Europe, its External Auditors or their appointed representative may effect;
- g) when acting under this Agreement, to observe any applicable laws and to ensure that the Council of Europe is not held liable in respect of third party (including State authorities') claims in this connection.
- (h) To take appropriate measures to prevent irregularities, fraud, corruption or any other illegal activity in the management of the Activity. All suspected and actual cases of irregularity, fraud and corruption related to this Agreement as well as measures related thereto taken by the Grantee must be reported to the Council of Europe without delay.

ARTICLE 3 - PAYMENT ARRANGEMENTS

1. The Council of Europe shall pay the amount mentioned in Article 1(1) in two instalments, as follows:
 - a) <...>. % within 30 days of receipt of this Agreement duly signed;
 - b) the balance within 30 days of receipt and approval of the documents specified in Article 2.2 c) and d).

Payment of the balance will be based on actual expenditure (as indicated in the statement of expenditure incurred), up to the amount provided for in the estimated budget.

2. Payments will be made in Euros.
3. The above-mentioned amount will be paid only by bank transfer to the following account opened in the name of the Grantee:

Account holder:

Full bank account number (RIB):

IBAN Code:

SWIFT Code:

Bank name:

Bank address:

ARTICLE 4 – COMMUNICATIONS BETWEEN THE PARTIES

1. The Contact point within the Council of Europe is:

Person / Function / Department

Address

Telephone

Email

Fax

The Contact point within the Grantee is:

Person / Function / Department

Address

Telephone

Email

Fax

2. Any communication is deemed to have been made when it is received by the receiving party, unless the Agreement refers to the date when the communication was sent.

3. Electronic communication is deemed to have been received by the receiving party on the day of successful dispatch of that communication, provided that it is sent to the addressees listed in paragraph 1 above. Dispatch shall be deemed unsuccessful if the sending party receives a message of non-delivery. In this case, the sending party shall immediately send again such communication to any of the other addresses listed in paragraph 1 above. In case of unsuccessful dispatch, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline, provided the communication is dispatched by another means of communication without further delay.

4. Mail sent to the Council of Europe using the postal services is considered to have been received by the Council of Europe on the date on which it is registered by the department identified in paragraph 1 above.

5. Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving party on the date of receipt indicated on the return receipt or equivalent.

ARTICLE 5 – LIABILITY FOR DAMAGES

The Council of Europe shall not be held liable for any damage caused or sustained by the Grantee, including any damage caused to third parties as a consequence of or during the implementation of the project.

ARTICLE 6 – CHANGES IN GRANTEE’S CIRCUMSTANCES

1. The Grantee shall inform the Council of Europe without delay of any changes in the persons who may legally represent it, or in its name, address or legal domicile.

2. By signing this Agreement, the Grantee declares on its honour certifying that it is not in any of the listed below situations and shall inform also inform the Council of Europe without delay in cases where:

a) it is or becomes the subject of a request for the opening of insolvency proceedings, or himself makes such a request, or goes into liquidation, ceases trading, or is or comes in a situation of bankruptcy, liquidation, termination of activity, or arrangement with creditors, or any like situation arising from a procedure of the same kind, or of any similar proceedings under the laws of the country in which he is domiciled;

b) it is sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;

c) it has received a final judgment, finding an offence that affects his professional integrity or serious professional misconduct;

d) it does not comply with its obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of its country of legal domicile.

3. In the event of failure to comply with the above provisions, costs incurred after the change of circumstances shall not be eligible.

4. The Grantee shall also inform the Council of Europe without delay in cases where it is or becomes involved in a merger, takeover or change of ownership or partnership or there is a change in its legal status. In the event of failure to comply with this obligation, costs incurred after the change of circumstances may not be eligible.

ARTICLE 7 – CONFLICT OF INTERESTS

1. The Grantee undertakes to take all necessary precautions to avoid any risk of a conflict of interests and shall inform the Council of Europe without delay of any situation constituting or likely to lead to any such conflict.

2. A conflict of interests exists where the impartial and objective exercise of the functions of any person under this Agreement is compromised for reasons involving family or private life, political or national affinity, economic interest or any other interest shared with another party.

ARTICLE 8 - CONFIDENTIALITY

The Council of Europe and the Grantee undertake to preserve the confidentiality of any document, information or other material directly related to this Agreement and duly classified as confidential, for a minimum of ten years after the date of transmission of the narrative report and financial statement under Article 2(c) of this Agreement.

ARTICLE 9 – VISIBILITY

1. Unless the Council of Europe requests or agrees otherwise, the Grantee shall take all necessary measures to publicise the fact that the Activity has received funding from the Council of Europe. Information given to the press and to the beneficiaries of the Activity, all related publicity material, official notices, reports and publications, shall acknowledge that the Activity was carried out "with funding from the Council of Europe" and shall display in an appropriate way the Council of Europe logo.
2. In cases where equipment or major items have been purchased using funds provided by the Council of Europe, the Grantee shall indicate this clearly on that equipment and those major items (including display of the Council of Europe's logo), provided that such actions do not jeopardise the safety and security of the Grantee's staff.
3. The acknowledgement and Council of Europe logo shall be clearly visible in a manner that will not create any confusion regarding the identification of the Activity as an activity of the Grantee, the ownership of the equipment and items by the Grantee, and the application to the Activity of the Grantee's privileges and immunities.
4. All publications by the Grantee pertaining to the Activity that have received funding from the Council of Europe, in whatever form and whatever medium, including the Internet, shall carry the following or a similar disclaimer: "This document has been produced with the financial assistance of the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of the Council of Europe."
5. All layouts of any communication items prepared by the Grantee are subject to approval with the Contact point within the Council of Europe.
6. The Grantee accepts that the Council of Europe may publish in any form and medium, including on its websites, the name and address of the Grantee, the purpose and amount of the funding and the percentage of co-financing.

ARTICLE 10 – OWNERSHIP/USE OF RESULTS AND EQUIPMENT

1. Ownership, title and industrial and intellectual property rights in the results of the Activity and the reports and other documents relating to it shall be vested in the Grantee, as the case may be together with third parties, unless otherwise decided by the Grantee.
2. Notwithstanding the provisions of Article 11(1) and subject to Article 9 above, the Grantee grants the Council of Europe the right to use free of charge, and as they see fit, all documents deriving from the Activity, whatever their form, provided this is in accordance with the existing industrial and intellectual property rights.

ARTICLE 11 – PROCUREMENT

1. Unless otherwise agreed by the Parties (the Council of Europe and the Grantee) in writing, the procurement of any goods, works or services and the award of grants by the Grantee and its partners in the context of the Activity shall be carried out in accordance with the applicable rules and procedures adopted by the Grantee.

2. This shall apply on the understanding that the Grantee's rules and procedures involve competitive tendering (with at least three competitive tenders) and conform to nationally or internationally accepted standards, in compliance with the principles of transparency, proportionality, sound financial management, equal treatment and non-discrimination, care being taken to avoid any conflict of interests. The Grantee must be in a position to submit the documents showing that it has complied with the obligations set forth in this article when requested to do so by the Council of Europe or its designated auditors.
3. As a derogation to paragraph 2 above contracts may be negotiated directly with suppliers without competitive tendering, if the expenditure concerns a purchase for an amount of less than €2000 excluding tax, or less than €5000 excluding tax for intellectual services where the basic selection criterion is the service provider's technical expertise.
4. Without prejudice to the specific procedures and exceptions applied by the Grantee, the award by the Grantee of contracts financed under this Agreement may not be cumulative or retrospective or have the purpose or effect of producing a profit for the Grantee.
5. The Grantee shall adopt reasonable measures, in accordance with its own procedures, to ensure that potential candidates or tenderers and financial aid beneficiaries shall be excluded from participation in a procurement procedure or a procedure for the award of financial aid if:
 - a) their legal status is unclear (e.g. they are unable to provide information concerning their incorporation under the applicable national law or registration with the tax and other competent authorities); or
 - b) they are bankrupt or subject to bankruptcy proceedings, are being wound up, are in judicial liquidation, have entered into an arrangement with creditors, have suspended business activities, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations; or
 - c) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*; or
 - d) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Council of Europe's financial interests; or
 - e) they are guilty of misrepresentation when supplying the information required as a condition of participation in the procedure or fail to supply this information; or
 - f) they are subject to a conflict of interests.

ARTICLE 12 - ELIGIBLE COSTS

1. To be considered eligible as direct costs under this Agreement, costs must:
 - a) be necessary for carrying out the Activity, be provided for specifically in this Agreement, and comply with the principles of sound financial management, in particular value for money and cost-effectiveness;

- b) have actually been incurred during the implementation period, as defined in Article 1.3 of the present Agreement;
 - c) be recorded in the Grantee's or Grantee's partners' accounts, be identifiable, be backed by originals of supporting evidence (as the case may be in electronic form), and be verifiable by the Council of Europe.
2. It should be noted that, except when this is materially impossible (e.g. to pay taxi fares), all payments to third parties must be made by transfers to their bank account.
3. The following expenses shall not in any manner be considered as eligible costs (the list is not exhaustive):
- a) debts and debts service charges;
 - b) provisions for losses or potential future liabilities;
 - c) interest owed by the Grantee to any third party;
 - d) items already financed through other sources
 - e) customs and import duties;
 - f) purchase, rent or leasing of facilities;
 - g) fines, Financial penalties and expenses of litigation;
 - h) bank charges, costs of guarantees and similar charges;
 - i) conversion costs, charges and exchange losses associated with any of the component specific euro accounts, as well as other purely financial expenses;
 - j) items already financed in another framework.

ARTICLE 13 - ACCOUNTS AND TECHNICAL AND FINANCIAL CHECKS

1. The Grantee shall keep accurate and systematic records and accounts in respect of the implementation of the Activity. Separate management accounts shall be kept for each Activity, and shall detail all receipts and payments.
2. The accounting regulations and rules of the Grantee shall apply, on the understanding that these regulations and rules conform to nationally or internationally accepted standards. In all other cases, the Grantee shall use a dedicated double-entry book-keeping system as part of, or as an adjunct to, the Grantee's own accounts. This dedicated system shall follow the procedures dictated by professional practice and provide precise details of interest accruing on funds paid by the Council of Europe.
3. The Grantee shall have in place a system of financial control involving segregation of duties, evidence of authorisation of transactions, use and retention of purchase orders, goods-received notes, quotes and contracts.

4. Financial transactions and financial statements shall be subject to the internal and external monitoring procedures laid down in the Financial Regulations, rules and guidelines of the Grantee. When requested by the Council of Europe, a copy of the audited financial statements shall be submitted to the Council of Europe by the Grantee.

5. The Grantee shall, for a minimum of ten years from the date of transmission of the narrative report and financial statement under Article 2 c) or d) of this Agreement:

- a) keep financial accounting documents concerning the activities financed; and
- b) make available to the Council of Europe, at its request, all relevant financial information, including statements of accounts concerning the Activity, whether they are kept by the Grantee or by its implementing partners or contractors.

6. The Council of Europe and its External Auditors may undertake checks (including on the spot) related to the Activity financed by this Agreement.

ARTICLE 14 – FINAL AMOUNT OF THE COUNCIL OF EUROPE FUNDING

1. The total amount to be paid by the Council of Europe to the Grantee may not exceed the maximum funding established under Article 1.1 of this Agreement even if the overall payments exceed the estimated total budget set out in Appendix II.

2. The Grantee accepts that the funding by the Council of Europe shall be limited to the amount required to balance receipts and payments of the Activity, as reflected in the estimated total budget set out in Appendix II, and that it may not in any circumstances result in a surplus for the Grantee. The Council of Europe's undertaking to pay its funding shall apply only for expenditure qualifying as eligible costs.

3. In cases where the Activity is suspended or not completed within the implementation period of this Agreement, the funds that remain unspent after all liabilities incurred in this period have been satisfied, including any interest earned, will be reimbursed to the Council of Europe.

4. Where the Activity is not carried out at all, or is not carried out properly, in full or on time, and without prejudice to its right to terminate this Agreement pursuant to Article 15, the Council of Europe may, after allowing the Grantee to submit its observations and without prejudice to Article 18, reduce the funding *pro rata* to take account of the part of the Activity that has not been carried out on the terms laid down in this Agreement.

ARTICLE 15 – TERMINATION

The Council of Europe reserves the right to terminate this Agreement and the Grantee undertakes to repay the funding in the following cases:

- a) if the Grantee fails to use the funding for the purpose of the Activity; or
- b) if the Grantee fails to explain in detail how the funding was used for the Activity; or
- c) if the Grantee fails to submit the required documents by the due date; or
- d) if the Grantee fails to fulfil any of the terms of this Agreement;

e) in cases covered by Article 6.2.

ARTICLE 16 – AMENDMENTS

1. The provisions of this Agreement may be amended only by written agreement between the Parties.
2. By derogation from Article 16.1, when an amendment to the provisional budget does not affect the basic purpose of the Activity, and the financial impact is limited to a transfer within a single budget heading, including cancellation or introduction of an item, or a transfer between budget headings involving a variation of 25% or less of the amount originally entered (or as amended by a written rider) in relation to each concerned heading, the Grantee may unilaterally amend the provisional budget and shall inform the Council accordingly in writing, at the latest in the next reporting phase.

ARTICLE 17 – CASE OF FORCE MAJEURE

1. In the event of force majeure, the parties shall be relieved of their obligations under this Agreement without any financial compensation. Force majeure is defined as including the following: major weather problems, earthquake, strikes affecting air travel, attacks, a state of war, health risks or events that would require the Council to cancel the funding.
2. In the event of such circumstances each party shall be required to notify the other party accordingly in writing, within a period of 5 days.

ARTICLE 18 – DISPUTES

Any dispute regarding this Agreement shall - failing a friendly settlement between the Parties - be submitted to arbitration in accordance with Rule No. 481 of 27 February 1976 (see Appendix IV) issued by the Secretary General with the approval of the Committee of Ministers as provided in Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe.

Done in two copies, in [*if the Parties are not physically present at the same place when signing the contract, insert the duty station of the person representing the Secretary General*] this date of [*if the Parties are not physically present at the same place when signing the contract, insert the date of the last signature*].

For the Council of Europe

For the Grantee

**APPENDIX I
DESCRIPTION OF THE ACTION**

**APPENDIX II
ESTIMATED BUDGET – GRANT AGREEMENT**

**APPENDIX III
MODEL FINANCIAL REPORT – GRANT AGREEMENT**

**APPENDIX IV
Rule No. 481 of 27 February 1976**

The Secretary General of the Council of Europe,
Having regard to the Statute of the Council of Europe, of 5 May 1949, and in particular its Articles 11 and 40.
Having regard to the General Agreement on Privileges and Immunities of the Council of Europe signed on 2 September 1949, and in particular its Articles 1, 3 and 21, as well as the Special Agreement relating to the seat of the Council of Europe signed on 2 September 1949,
Considering that it is appropriate to determine the arbitration procedures for any disputes between the Council and private persons regarding supplies furnished, services rendered or immovable property purchased on behalf of the Council,
Having regard to the decision of the Committee of Ministers of the Council of Europe at the 253rd meeting of the Deputies,
Decides

ARTICLE 1

Any dispute relating to the execution or application of a contract covered by Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe shall be submitted, failing a friendly settlement between the parties, for decision to an Arbitration Board composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators: in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.

ARTICLE 2

However, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.

ARTICLE 3

The Board referred to in Article 1 or, where appropriate, the arbitrator referred to in Article 2 shall determine the procedure to be followed.

ARTICLE 4

If the parties do not agree upon the law applicable the Board or, where appropriate, the arbitrator shall decide *ex aequa et bono* having regard to the general principles of law and to commercial usage.

ARTICLE 5

The arbitral decision shall be binding upon the parties and there shall be no appeal from it.

Strasbourg, 27 February 1976, Georg KAHN-ACKERMANN, Secretary General