

CONTRACT FOR TWINNING PROJECTS FUNDED BY THE SMALL STATES NETWORK FOR ECONOMIC DEVELOPMENT

(Version applicable as from 24 October 2009)

ANNEX 1: GENERAL CONDITIONS

Article 1. Definitions

1.1. The following definitions apply to these conditions:

Beneficiary Institution (BI): The Beneficiary Institution is that institution located in the Beneficiary State responsible for the management and implementation of the project that is funded by the SSNED.

Beneficiary State (BS): The State (country) that will benefit from the Twinning Project to be funded by the Network.

Budget: The budget assigned to the Project, being Annex 3 of the Contract.

Conflict of Interest: Conflict of interest occurs where impartiality in decision-making is compromised due to family connections, political affiliations, business interest or any other personal interest.

Contract: The signed agreement and its annexes entered into between the Beneficiary State, the Service Provider and the Small States Network for Economic Development (the Parties) in connection with the Project.

Force majeure: Any unforeseeable situation beyond the Parties' control which prevents them from fulfilling their Contractual obligations, in spite of due diligence.

Funding, the: the amount of money allocated for the implementation of the Project.

Implementation Period: The implementation period is the time span between the beginning and the end of the substantive part of the Project.

Line Ministry: The Ministry in the Beneficiary State designated as the Beneficiary Institution in the Terms of Reference.

Network: Small States Network for Economic Development.

Parties to the Contract: The Contract has three Parties, namely the Beneficiary State, the Service Provider and the Network.

Per Diem: The Per Diem (or subsistence allowance) covers accommodation, meals, local travel within the place of mission and sundry expenses, equivalent to that applicable to the EC-funded external aid Contracts, when missions require an overnight stay away from the normal base of operations.

Project: The twinning project, as described in the Terms of Reference, being Annex 2 of the Contract.

Project Leader in the Beneficiary State (BS-PL): The person, appointed by the Beneficiary Institution to oversee and monitor the progress of the Project on behalf of the Beneficiary State.

Project Leader appointed by the Service Provider (SP-PL): The person, appointed by the Service Provider to oversee and monitor the progress of the Project on behalf of the Service Provider.

Project Manager (PM): The person appointed by the Beneficiary Institution to manage the Project and to organise logistics of those involved in the Project including the Twinning Advisor and other experts. The Project Manager is also to ensure that all documentation relating to request for funding is submitted to the Network.

Project Monitoring Committee (PMC): A Committee set up by the Beneficiary State, which shall include the BS-PL, the PM and others, as appropriate. The Network shall have the right to appoint a member on the PMC. The Twinning Advisor can be invited to attend meetings of the PMC as observer.

Request for Payment: A document bearing the signature of the BS-PL, requesting an advance or the payment of the provision of a service or purchase of goods, in direct connection with the Project.

Service Provider (SP): the party which enters into a Contract with the Network and the Beneficiary State to perform the services required by the Beneficiary State. The SP should be either (a) a public sector ministry, department or agency or (b) a private sector organization, provided that this organization is authorised to offer the Services by the Government of the Small State Twinning Partner where the organization is located and/or registered.

Services: activities to be performed by the Service Provider or by experts engaged by the Service Provider, as per Contract, including technical assistance, studies and training.

Small State Twinning Partner (SSTP): The State (country) in which the Service Provider resides or is registered as a service provider.

Substantive Part of the Project: That part of the Project which commences when the Service Provider starts offering his/her Services and ends when the Service Provider completes the tasks indicated in the Terms of Reference, being Annex 2 of the Contract.

Subsistence allowance: See “Per Diem”

Twinning Advisor: The person appointed by the Service Provider to provide technical advice to the Beneficiary Institution in connection with the implementation of the project.

Terms of Reference: Annex 2 of the Contract, relating, *inter alia*, to the provision of the Services, containing (a) brief background information about the beneficiary state and the line ministry involved in the Project (b) objectives of the Project and the results to be achieved (c) Project description in detail, including the functions of the Project Leaders, Twinning Advisor and Project Manager (d) logistics and timing, presented as a work programme (e) physical and personnel requirements including qualifications of the experts involved (f) administrative and financial reporting requirements, and (g) methods of monitoring including Indicators.

Article 2. General Obligations

- 2.1. The BS and the SP shall implement the Project with diligence, efficiency and transparency, and in accordance with the Terms of Reference of the Project.
- 2.2. The BS must provide the Network and SP-PL all required information relating to the implementation of the Project.
- 2.3. Personnel assigned to implement the Project by the BS and the SP shall be appropriately qualified and experienced and shall have the necessary skills to undertake the required tasks.
- 2.4. Parties to this Contract that have some Contractual or other juridical relationship with third parties that are involved in the Project, undertake to make this Contract binding on such third parties to the extent necessary so as to implement this Contract in accordance with its intended terms and scope. Without prejudice to the generality of the foregoing the Parties shall ensure that such third parties are bound by the obligation of confidentiality, the arbitration clause, and the conflict of interest clause.
- 2.5. The Parties undertake to inform all third parties involved in the implementation of the Project about this Contract so as to ensure that this Contract is properly observed.

Article 3. Monitoring and Administrative Reporting

- 3.1. Ongoing monitoring shall be conducted by the PMC in the BS. For this purpose, the PMC is expected to meet at least three times, namely at the Inception Stage, half way through the implementation period and at the end of the substantive part of the Project. Monitoring should be conducted principally with regard to the expected outputs set in the Terms of Reference and the allocations set in the Budget.

- 3.2. The PM in consultation with the BS-PL shall draw up at least three administrative reports related to the Project, namely (a) a concise inception report at the start of implementation, (b) an interim progress report, roughly half way between the commencement and the expected termination of the Project, which report is to include a financial statement and (c) a final report, on completion of the Project, which report is also to include a financial statement. The final report is to be drawn up in consultation with the SP-PL. These reports are to be submitted to the Network by the deadline indicated in the Terms of Reference.
- 3.3. The main headings and templates relating to these administrative reports are appended to the Contract as Annex 7.
- 3.4. Following the receipt by the Network of the final report, the Network secretariat may appoint an expert or a team of experts, depending on the magnitude of the project, to conduct a final evaluation. The secretariat may also conduct an interim evaluation if it feels this is required. The BS and the SP shall provide documents and information connected with the Project to the expert/expert team and shall assist with the evaluation.
- 3.5. The Network shall consult with the BS and SP and will provide them with an advanced draft of the Evaluation Report, before finalising the Report. The Network shall provide copies of the final Evaluation Report to the BS and SP.

Article 4. Implementation Period

- 4.1. The implementation period of the Project is laid down in the Terms of Reference. The BS must inform the Network without delay of any circumstances likely to hamper or delay the implementation of the Project.
- 4.2. The BS or the SP may request an extension of the Project's implementation period without requesting an amendment to the Contract provided that this is done no later than one month before the Project is scheduled to end and provided that the request is accompanied by supporting evidence needed for its appraisal. The extension shall be granted provided that all parties agree to such extension.

Article 5. Amendments to the Contract and Amendments to the standard form

- 5.1. A Party to the Contract can propose amendments to the Contract by indicating such proposed amendments using the form appended to the Contract as Annex 4 (Part 1) and the other parties shall reply on Part 2 of the same form. In order for these amendments to be binding they have to be approved and signed by the three Parties in the form appended to the Contract as Annex 4 (Part 2).
- 5.2. The BS or SP requesting an amendment to the Contract must submit, through their respective Project Leader, the request to the other Parties at least one month before the date on which the amendment is expected to enter into force, unless there are special circumstances duly substantiated by the Party requesting the amendment, and accepted by the other Parties.
- 5.3. Once approved and signed by the three parties, the amendments entered in the forms appended as Annex 4 (Part 2) shall become an Addendum to the Contract. Unless otherwise stated, the amendments will come into force as soon as the Addendum is signed by the three Parties.
- 5.4. When the Contract has not yet been signed, Annex 4 may be used to derogate from these General Conditions. Annex 4 may be used as many times as needs be.

- 5.5. When the proposed amendments to the Contract does not affect the basic purpose of the Project and the financial impact is limited to a transfer between the main budget headings involving a variation of 15% or less of the original amounts, the other Parties shall not oppose these amendments, provided that the change in the budget headings only affects the budget of the Party requesting the amendment.
- 5.6. Changes of addresses and contact details and changes in the name and related details of the bank account may simply be notified to the other Parties.

Article 6. Termination of the Contract

- 6.1. If the BS believes that the Services in connection with the contract can no longer be executed effectively or appropriately, it shall consult with the SP on this matter. Likewise, if the SP believes that the Services can no longer be executed effectively or appropriately, it shall consult with the BS on this matter. If the two Parties agree to terminate the Contract they shall communicate such agreement in writing to the Network, in which case the Contract will be terminated as soon as the Network receives the written communication, duly signed.
- 6.2. Failing agreement between the BS and the SP to terminate the Contract, the Party that wants to terminate the Contract shall serve one month's written notice to the other Parties that it wants to terminate the Contract.
- 6.3. The Network may terminate the Contract and in particular release itself from the obligation to provide Funding when (a) the BS or the SP fail to fulfil any of the obligations relating to the Contract's Specific and General Conditions, without appropriate justification, after being given a month's notice in writing to comply with these conditions and (b) either the BS or the SP make false or incomplete statements to obtain the Funding provided for in the Contract.
- 6.4. The BS and the SP may terminate the implementation of all or part of the Project if force majeure and other circumstances make it too difficult or dangerous to continue. In such an eventuality, the BS and the SP, jointly or individually, must inform the Network without delay and provide all the necessary details in this regard.
- 6.5. When the Contract is terminated prematurely, the Network in its capacity as fiduciary of the other Parties, shall decide (a) which part of the Project will have already been implemented satisfactorily in line with the Contract's Specific and General Conditions and Terms of Reference; (b) what portion of the Funding should be allocated for the implemented part of the Project; and (c) how this portion is to be allocated between the BS and the SP.

Article 7. Reduction of the Funding

- 7.1. If in the opinion of the Network, acting in its capacity as fiduciary of the other Parties, the Project (a) was not implemented fully and/or (b) was not implemented up to the standard required, as per the Terms of Reference, the Funding may, in the light of the above conclusions, be reduced by the Network. In such an eventuality, the Network will determine what proportion of the reduction of the Funding should affect the BS, and what proportion, the SP. In determining the proportion of such reductions, the Network shall give due consideration to the factors that led to the Project being implemented in a poor or partial manner.
- 7.2. If the BS fails to supply the Network with the necessary administrative reports by the dates indicated and fails to furnish an acceptable and sufficient written explanation as to why the

BS was unable to comply with this obligation, the Network may reduce the Funding to the BS, giving due consideration to the factors that led to the non-submission of the reports.

Article 8. Liability and Conflict of Interests

- 8.1. The Network shall not under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the BS or the SP while the Project is being carried out or as a consequence of the Project. The Network cannot therefore accept any claim for compensation or increases in payment in connection with such damage or injury.
- 8.2. The Network shall only be liable for obligations directly associated with the Project up to a maximum of the Funding indicated in the Contract.
- 8.3. The Parties to the Contract shall take all necessary precautions to avoid conflict of interests and shall inform the Network without delay of any situation constituting or likely to lead to such conflict.

Article 9. Confidentiality

- 9.1. The parties undertake to preserve the confidentiality of any document, information or other material in connection with the Project, communicated to them in confidence until at least seven years after the final payment in connection with the same Project.

Article 10. Publicity

- 10.1. The BS and the SP shall, when the occasion arises, publicise the fact that the Network has financed or co-financed the Project. Any notice or publication by the BS concerning the Project, including those given at a conference or seminar, must specify that the Project has received funding from the Network.
- 10.2. If the BS or SP decide to place advertisements in the media relating to the Project, prior approval of the wording of the advertisement will have to be obtained from the Network before this goes to press. The Network may suggest amendments to the advertisement.

Article 11. Ownership/use of Results and Equipment

- 11.1. Ownership and title of intellectual and industrial property rights directly associated with the Project's results, reports and other documents relating to it, shall be vested in the Network, except for intellectual property rights associated with training material prepared by the SP in the course of the Project, which shall remain with the SP.
- 11.2. Ownership of equipment purchased for the purpose of the Project in the BS shall be vested in the BS. Title to consumables and any other movables shall also be vested in the BS.
- 11.3. Title to any Contracts of lease or any other Contract whatsoever entered into by any of the Parties for the purpose of the Project shall vest in the party which funded the same.

Article 12. Applicable Law and Dispute Settlement

- 12.1. This Contract shall be governed by Maltese Law.

- 12.2. A dispute shall be formally notified by a Party through a letter addressed to the other Parties, duly dated and signed by the authorized representative of that Party. On receipt of this letter, the Network shall commence proceedings to settle the dispute.
- 12.3. Any dispute relating to the Project or to the interpretation of the Contract which cannot be settled amicably between the Parties shall be referred to arbitration. It is being agreed for the purposes of Article 1(3) of the Model Law annexed to the Arbitration Act, Chapter 387 of the revised edition of the published Laws of Malta that the disputes contemplated herein relate to more than one country and this arbitration agreement is governed by Part V of the said Arbitration Act.
- 12.4. The Network shall set up a Committee for Arbitration made up of four members, one of which shall be appointed by the Network, two by the BS and the SP respectively and a chairperson appointed jointly by the BS and the SP within 2 weeks that the dispute is notified. If the Parties do not agree on the selection of a chairperson, this function will be carried out by the Governor of the Central Bank of Malta or his delegate. The chairperson shall also determine what procedure is to be followed. The decision of the Committee for Arbitration shall be binding on the parties without recourse to appeal.
- 12.5. Proceedings shall take place in the English language, unless otherwise determined by the Network.
- 12.6. The courts of Malta shall have any residual jurisdiction contemplated under Chapter 387 of the Laws of Malta.

Article 13. Financial Provisions: General Principles

- 13.1. Payments in connection with reimbursements or for delivery of goods and services or in connection with advances, can only be effected following a Request for Payment, submitted to the Network (a) directly by the BS-PL in cases of expenditures incurred or advances requested by the BS, or (b) by the SP-PL, through the BS-PL, in cases of expenditures incurred or advances requested by the SP. Annex 5 of the Contract contains a template that must be used when requesting payment.
- 13.2. In the Request for Payment the BS-PL must certify that the expense is (a) an eligible cost as indicated in these general conditions (b) is directly connected with the Project and (c) forms part of the budget of the Project.
- 13.3. A Request for Payment may be made for (a) an advance in connection with travelling or per diem (b) refund of an expense incurred by the BS or SP in connection with the delivery of services or for the purchase of goods and (c) direct settlement to suppliers in connection with the delivery of services or for the purchase of goods.
- 13.4. Payments by the Network may be made (a) by transfer to the bank account BS-PL if the expense is incurred by the BS-PL (b) by transfer to the bank account of the SP-PL if the expense is incurred by the SP-PL (c) directly to the suppliers of goods or services if the goods or services are purchased on credit on behalf of the BS or SP, on the basis on an invoice by the supplier.
- 13.5. Payments shall be made in Euros unless it is cheaper to transact in USD or GBP. Costs incurred in other currencies must be converted at the reference rate published by the European Central Bank as on the date of the invoice or on the request for payment. No

compensation will be made for exchange rate fluctuations after or before the dates of the invoice or request for payment.

- 13.6. Unless otherwise provided, payments shall be made within 60 days of receipt of the Request for Payment. Payment may be deferred if the services covered by the payment are contested or if the supporting documentation is incomplete. The 60-day payment period does not include any delays occurring as a result of banking procedures.
- 13.7. If the time-limit for payments is exceeded without due justification, the BS or SP shall be entitled to interest calculated pro rata on the basis of the number of days by which payment is delayed, at the interest rate applied by the European Central Bank on Deposit facility, plus 1 percentage point.

Article 14. Eligible costs

- 14.1. To be considered eligible as costs of the Project:
 - The cost must be necessary for carrying out the Project.
 - In the case of delivery of services and purchase of goods, the costs must have actually been incurred by the BS or have been purchased on credit from a supplier.
 - In the case of per diems (subsistence allowances), the cost will be given totally or partially as an advance.
 - All costs must be identifiable, verifiable and backed by originals receipts and related supporting evidence.
- 14.2. Eligible costs covered by the Contract will include:
 - Remuneration for staff engaged specifically for the Project, and remuneration-related costs, which must not exceed those normally paid for similar services in the BS or the SSTP, as the case may be.
 - *Per diem* rates, which should not exceed those indicated in the framework of EC-funded external aid Contracts and in cases of missions requiring an overnight stay away from the base of operations applicable to the year during which the Project is in operation. The network reserves the right to advance 60% of the per diem before the beginning of a mission, with the remaining 40% paid within 60 days of the completion of the mission.
 - Travelling expenses directly connected with the project, and not undertaken in connection with the normal occupation of the traveller or with other business. These expenses include (a) travel by air at economy class in the most direct route between the place of departure and the final destination – travel at a class higher than economy class is not permitted unless specifically authorised by the Network in cases where the traveller is aged 65 years or older or when the travelling time exceeds 15 hours, or when there are other special circumstances that in the opinion of the Network justify travel at a class higher than economy class; (b) travel by train or ship/ferry; and (c) travel by own car exclusively in connection with the project, to be remunerated at a maximum rate of €0.35 per kilometre, provided that the cost of travel by own car is more practical and/or is cheaper than travel by air (economy class), sea or railway.
 - Purchase or rental costs for equipment and supplies (new or used) specifically used for the purposes of the Project;
 - Costs of services at rates corresponding to market rates in the country where they are purchased;
 - Consumables directly associated with the Project;
 - Sub-contracting, as indicated in the Terms of Reference;
 - Other costs deriving directly from the requirements of the Contract, including dissemination of information, evaluations and audits of the Project, translation,

reproduction of materials, insurance (provided that the interests of the Network are specifically covered), costs of bank transfers and financial guarantees;

- A contingency reserve not exceeding 5 % of the total costs which may be used only with the prior written authorisation of the Network.

14.3. Unless otherwise specifically included in the Budget, services offered for the Project by public service officials in the BS and SSTEP shall be considered as a contribution in kind. However compensation for the writing of reports by such officials may be considered as an eligible expense, if this is specified as such in the Budget.

14.4. Unless otherwise specifically provided for in the Budget, the following costs shall not be considered eligible costs:

- contributions in kind relating to premises or equipment;
- debts and provisions for losses or debts;
- interest owed;
- items already financed in another framework;
- purchases of land or buildings;
- currency exchange losses;
- taxes, including VAT (except where the BS or the SP cannot reclaim VAT);
- credits to third Parties.

Article 15. Accounts and Technical and Financial Checks

15.1. Eligible and approved expenses incurred by the BS and SP in connection with the project shall be settled by cheque or by bank transfer and not in cash, except in the case of petty cash, which must not exceed €25 per item purchased. All petty cash expenses must be recorded and related receipts must be kept.

15.2. The BS-PL and the SP-PL shall keep accurate and regular records of the payments made by them respectively in connection with the implementation of the Project using appropriate accounting methods. For this purpose the BI through the BS-PL shall prepare and keep appropriate supporting documents for inspection and verification by the Network. These documents shall include:

- Proof of disbursement of funds in case of delivery of goods, including invoices, copy of cheques or transfer documentation, and delivery slips from suppliers.
- Proof of delivery of services, including invoices, copy of cheques or transfer documentation, and statement of completion of the service;
- Proof of travel (a) in case of transport by air, sea or train such proof should include the original boarding passes, a copy of the itinerary, and proof of disbursement of funds, when applicable, including copy of cheque or transfer documentation and receipt by the travel agency (b) in the case of transport by own car, such proof should include a statement signed by the traveller, attesting to the distance covered exclusively in connection with the project.
- Bank statements, which attest to the expenses made by the BS-PL and BS-SP directly in connection with the Project.

Copies of these documents are to be annexed to the Request for Payment Document.

15.3. In the case of personnel engaged specifically for the Project, the BS-PL and the SP-PL shall instruct such persons to keep time-sheets relating to their services and tickets relating to air, land and sea transport, and other documents related to travelling and services offered by such personnel. The BS-PL shall keep these records as well as related records such as Contracts and salary statements for inspection and verification by the Network. Copies of these documents are to be annexed to Request for Payment.

- 15.4. Records relating to payments must be kept for a 5-year period after the last payment made under the Contract.
- 15.5. The BS and the SP shall allow the Network, and any external auditor to examine the documents, including by means of on-the-spot checks.

Article 16. Final amount of Financing by the Network

- 16.1. The total amount to be paid by the Network to the BS and the SP taken together shall not exceed the amount of the Funding laid down in the Contract's Specific Conditions, even if the total eligible costs disbursed or are accrued exceed the total budget, appended to the Contract as Annex 3.
- 16.2. If the eligible costs disbursed or are accrued at the end of the Project are less than the estimated total cost referred to in the Contract's Specific Conditions, the Network's contribution shall be limited to the amount actually disbursed or accrued.
- 16.3. The BS and the SP agree that the Funding can under no circumstances result in surplus of receipts over the costs for the BS.