
FRAMEWORK AGREEMENT

Content Development Services for Destination Marketing

DRAFT

Between The **European Travel Commission AISBL**, an international non-profit association according to Belgian law, having its registered offices at 1000 Brussels (Belgium), Rue du Marché aux Herbes 61, VAT number 0408.138.386 ;

Hereinafter « **ETC** »

and having its registered offices at ;

Hereinafter « **the Supplier**»

Each party will be called “Party” and together “Parties”;

WHEREAS

- 1) ETC is an international non-profit-making organisation, whose members are 33 National Tourism Organisations (NTOs) of Europe and whose role is to promote tourism to Europe.
- 2) Within the framework of its activities, ETC carries out a joint programme of activities co-financed by the European Commission. The task object of this Agreement is part of these activities co-financed by the European Commission.
- 3) The task which is the object of this Agreement is defined in the Technical Specifications - **Annex A, articles 2 and 4** , hereinafter « **the Task** ». The Task was submitted to tender, following which the Supplier’s offer - **Annex B**, hereinafter « **the Offer** » was approved.
- 4) Definitions:
 - **Client Materials:** all materials, equipment and tools, drawings, specifications and data supplied by ETC to the Supplier.

- **Confidential Information:** any confidential and/or proprietary information of either Party (either marked as such or not and either oral or in writing) including but not limited to the terms of this Agreement, its business affairs, customers, clients, suppliers, operations, methodologies, know-how, processes, product information, designs, trade secrets or software. For the avoidance of doubt, information already in the public domain through no fault of either Party; available to the Receiving Party on a non-confidential basis before disclosure by the Disclosing Party or by any third party who is not prohibited from disclosing the information is not deemed to be confidential.
- **Conflict of interests:** a situation where the impartial and objective implementation of the Agreement by the Supplier is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest or any other shared interest with ETC, the European Commission or any third party related to the Task.
- **Data Protection Legislation:** the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time.
- **Force Majeure Event:** any situation that:
 - prevents either party from fulfilling their obligations under the Agreement,
 - was unforeseeable, exceptional situation and beyond the parties' control,
 - was not due to error or negligence on their part (or on the part of other participants involved in the action), and
 - proves to be inevitable despite exercising all due diligence.Any situation constituting force majeure must be formally notified to the other party without delay, stating the nature, likely duration and foreseeable effects A Force Majeure Event may include without limitation, acts of God, flood, earthquake or other natural disaster, global pandemics declared by WHO, war, riots and government action. However, the following cannot be invoked as Force Majeure: labour disputes, strikes, financial difficulties or any default of a service, defect in equipment or materials or delays in making them available, unless they stem directly from a relevant case of force majeure.
- **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including lists of business contacts, know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- **Offer:** the Supplier's offer, as approved by ETC, included in Annex B to this Agreement.

- **Task:** the object of this Agreement as defined in the Technical Specifications included in Annex A to this Agreement.
- **Task Material:** all deliverables related to the Task, including but not limited to adds, posters, reports, promotional materials (such as brochures, leaflets, presentations, whether on paper or in electronic form, etc.), etc.

WHEREAS ETC will engage the service of the Supplier on the terms and conditions hereinafter set forth and

WHEREAS the Supplier is ready and willing to provide its services on the said terms and conditions,

ETC and the Supplier agree as follows:

1. SCOPE OF THE AGREEMENT

The Supplier will execute the services related to the production of the Task as described in the Technical Specifications - **Annex A, articles 2 and 4** .

Signature of the agreement imposes no obligation on ETC to purchase. Only implementation of the agreement through individual orders by email is binding on ETC.

2. DURATION OF THE AGREEMENT

The Agreement shall start on **[date to be agreed with ETC]** and it will last for a period of 3 years after which the agreement might be renewed for a period mutually agreed between ETC and the Supplier. Renewal does not imply any modification or deferment of existing obligations. This clause applies without prejudice to the provisions of clause 9.6.

3. EXECUTION OF THE TASK

A. OBLIGATIONS OF THE SUPPLIER

- 3.1 The Supplier will execute the Task in compliance with the specifications outlined in Annex A and Annex B. If there is any inconsistency between the terms of Annex A and Annex B, the terms of Annex A shall prevail, unless specifically agreed otherwise in a written document signed by both Parties.
- 3.2 The supplier agrees to follow any advice by ETC throughout the implementation of the Task.
- 3.3 The Supplier will respect the accepted business standards and will perform the Task with all care and due diligence required in carrying out this type of work. The Supplier will take all necessary measures to prevent any situation of Conflict of interests. The Supplier will comply with all legislation and regulations in force.
- 3.4 The Supplier must carry out the Task in line with the highest ethical standards and the applicable EU, international and national law on ethical principles. The Supplier must commit to and ensure the respect of basic EU values (such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities).
- 3.5 The Supplier will establish a core team of professional experts that will deliver the Task. The replacement of core team members will be limited as much as possible.
- 3.6 Replacement of core team members will be timely and will only be accepted if the replacing professional expert disposes of a level of knowledge and experience that is comparable to the one of the departing professional expert. Any such acceptance by ETC shall not relieve

the Supplier from responsibility for the performance of that personnel member or the execution of the Task.

- 3.7 The Supplier shall provide the appropriate number of adequately experienced, trained and qualified personnel who are highly responsive, (and) will establish and maintain effective and harmonious working relationships and continuous communication between all parties involved and will promote a positive project morale. Management procedures must be streamlined, quick, simple and effective.
- 3.8 All personnel provided by the Supplier shall be appropriately qualified and experienced in the duties assigned to them.
- 3.9 All personnel provided by the Supplier, including autonomously hired sub-consultants and/or independently working specialists, must be free from Conflict of interests in the responsibilities they take on.
- 3.10 The Supplier shall have risk mitigation measures in place for the processes related to the execution of the Task.
- 3.11 Technical, human, material, travel expenses, transportation, insurances covering the Supplier's liability for accidents at work as well as his civil liability towards third parties in the execution of the assignment, media and audio resources should be provided by and are the sole responsibility of the Supplier. ETC will not assume any responsibility for any damage that may occur during the implementation of the Task.
- 3.12 The Supplier agrees to strictly respect the deadlines for the execution of the Task negotiated with ETC before placing each order.
- 3.13 The Supplier will provide ETC with regular updates on progress of the Task, and necessary reports requested by ETC including but not limited to the reports mentioned in article 4.1.4 of Annex A.
- 3.14 ETC shall set the deadline for submission of the aforementioned reports based on the timeline for implementation of the Task. The Supplier shall submit the aforementioned reports in English.
- 3.15 Notwithstanding possible acceptance of documents submitted in execution of the Task, the Supplier is liable for any damage caused either to ETC or to third parties resulting from a fault in the execution of the Task.
- 3.16 The Supplier shall indemnify ETC against all costs, claims, liabilities and expenses (including reasonable legal expenses and costs and any personnel time) incurred by ETC in connection with or as a result of any legal or regulatory action or investigation (hereinafter « **Claim** ») related to the Task or to this Agreement, against or involving ETC and which requires ETC to provide any information, evidence, analysis or carry out any other activity in the course of such Claim.

- 3.17 The Supplier must immediately inform ETC of any of the following:
- (a) events which are likely to affect or delay the implementation of the Task, in particular
 - (i) changes in their legal, financial, technical, organisational or ownership situation (including changes linked to ESPD submitted with the offer);
 - (b) circumstances affecting:
 - (i) the decision to award the implementation of the Task to the Supplier;
 - (ii) compliance with requirements under the Agreement.

B. OBLIGATIONS OF ETC

- 3.18 ETC shall:
- a) co-operate with the Supplier in all matters relating to the Task;
 - b) provide, in a timely manner, such information and Client Materials as the Supplier may reasonably require for the performance of the Task, and ensure that they are accurate and complete in all material respects.

C. RELATIONS BETWEEN ETC AND THE SUPPLIER

- 3.19 By virtue of this Agreement, the Supplier works independently and shall not be considered under any circumstances to be a member of ETC staff and shall not be subject to the Statutes and Work Regulations of ETC.
- 3.20 ETC cannot be held liable for any damage caused or sustained by the Supplier, including any damage caused to third parties as a consequence of or during the implementation of the Task.

4. FINANCIAL PROVISIONS

- 4.1 The maximum amount covering all purchases under this framework agreement for the duration of the agreement without renewal is **4,000,000 EUR (four million euros)** (excluding VAT and including other taxes if applicable). The above value is not binding on ETC in any way. The total amount of the orders placed by ETC may not necessarily correspond to the above stated value. The actual amount is therefore only determined when the individual orders are placed.

Unless otherwise agreed between the Parties, invoicing will be done on a on a per-placed order basis after submission of the corresponding deliverables and, if applicable, a statement report of the actual expenses incurred on behalf of ETC (including all expenses, fees and applicable taxes) and duly justified based on supporting documents.

The prices of the services are as listed on **page X** of Annex B (Supplier's offer). The services described in Annex A and Annex B must be executed within these prices.
Price revision does not apply for this agreement and any renewal of this agreement.

Billing should be made in Euro and with the following details:

European Travel Commission (ETC)

Rue du Marché aux Herbes 61

1000 Brussels - BELGIUM

VAT number: BE 0408138386

All taxes must be included in the final amount on each invoice.

- 4.2 If the Task has not been implemented in conformity with the specifications set out in Annex A and Annex B or has been implemented poorly, partially or late, ETC reserves the right to request the Supplier to correct, amend or complete or refuse it. In the case of refusal, the payment may be made by ETC in consideration of the work performed to its satisfaction.
- 4.3 The amount payable by ETC shall be reduced in the case of breach of any other obligations arising of this Agreement.

5. PUBLICITY AND OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

- 5.1 All the Task Material shall display the logo of Europe-visiteurope.com and the European Union (mentioning “co-funded by the European Union” and the EU emblem). ETC will provide the Supplier with the guidelines on how to use the Europe-visiteurope.com logo, the reference to the co-funding and the EU emblem at the start of this agreement. Any failure under this Agreement shall result in the sanction foreseen in article 4.22.
- 5.2 Any communication or publication that relates to the Task, made by the Supplier in any form and using any means, must indicate that it reflects only the author’s view and that the European Commission is not responsible for any use that may be made of the information it contains. The following disclaimer (translated into local languages where appropriate) must be used: “Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the granting authority can be held responsible for them.”
- 5.3 The official logo and name of ETC may only be used by the Supplier in connection with this Agreement and with the prior written approval of ETC. The Supplier shall obtain ETC’s written consent to use its name, logo or other specified material in press releases, Supplier brochures or award submissions.
- 5.4 The Supplier grants and transfers to ETC, and the European Union a worldwide, royalty-free, non-exclusive, perpetual (for the duration of the applicable copyright) license to exercise the Intellectual Property Rights in the Task as stated below:
- a) to edit, modify and reproduce by any means (mechanical, digital or other), in whole or in part, in any form and in an unlimited number of copies, the Task Material or

- incorporate the Task Material into other material, and to reproduce the Task Material as incorporated in such other material;
- b) to create and reproduce derivative works from the Task Material;
 - c) to distribute unlimited copies and display publicly the Task Material, whether independently or as part of other material;
 - d) to distribute unlimited copies and display publicly derivative works from the Task Material;
 - e) to translate the Task Material;

The above rights may be exercised in all media and formats whether now known or hereafter devised. The above rights include the right to make such modifications as are technically necessary to exercise the rights in other media and formats.

5.5 In addition to article 5.5, ETC will be the sole owner of all rights, including use and dissemination, modification, reproduction, representation and adaptation rights, related to source code, data and any other type of content gathered or produced by the Supplier during and for the execution of the Task. The Supplier agrees not to make any use, either for private or third parties' benefit, of this content.

5.6 The Supplier shall indemnify ETC in full against any sums awarded by a court against ETC arising out of or in connection with any Claim brought against ETC for infringement of a third party's rights (including any Intellectual Property Rights) arising out of or in connection with the receipt or use of the Task Material by ETC.

5.7 ETC grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this Agreement for the sole purpose of executing the Task for ETC in accordance with the Agreement.

6. CONFIDENTIALITY

6.1 Each party agrees not to disclose Confidential Information communicated with the other party during and after the execution of the Task except to the extent:

- a) permitted by this agreement,
- b) each party consents in writing, or
- c) required by EU, Law, a court of competent jurisdiction or any governmental or regulatory authority subject to prior notice to the other party.

6.2 Each party may disclose the other party's confidential information to its employees, officers, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 6.

7. PROCESSING OR SHARING OF PERSONAL DATA

- 7.1 Both parties shall comply with all applicable requirements of the Data Protection Legislation.
- 7.2 The Supplier may grant its personnel access only to data that is strictly necessary for implementing, managing and monitoring the Agreement. The Supplier must ensure that the personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality.

The Supplier must adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing of the personal data concerned. This is in order to ensure, as appropriate:

- a) the pseudonymisation and encryption of personal data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

8. AMENDMENTS TO THE AGREEMENT

- 8.1 Any amendment to this Agreement shall be made in writing and signed by all parties.

9. SUSPENSION AND TERMINATION OF THE AGREEMENT

- 9.1 ETC may terminate the Agreement by giving 14 days written notice to the other party if:
- a) a change in the Supplier's legal, financial, technical, organizational or ownership situation is likely to affect the implementation of this Agreement;
 - b) ETC has evidence that the Supplier has committed irregularities, fraud or breach of obligations related to the award procedure, in particular regarding the exclusion and eligibility criteria mentioned in Annex A.
 - c) the implementation of the Task is prevented or suspended due to Force Majeure;
- 9.2 Without affecting any other right or remedy available to it, either party to the Agreement may terminate it with immediate effect by giving 14 days written notice to the other party if:
- a) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether

voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- b) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- c) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

9.3 In the event of persistent breach by the Supplier of one or several of its contractual obligations, including agreed deadlines, ETC will have the right, 7 days after having sent a formal written notice indicating said breach either:

- a) to terminate the agreement at the Supplier's fault; or
- b) to continue the execution of the agreement in a friendly or judicial manner.

In both situations, ETC will be entitled to claim full indemnities for the damage suffered.

ETC's choice to continue the execution of the agreement after a formal written notice has been issued does not deprive it from its right to consider later that the agreement is terminated, provided that a new written notice is sent and 7 days thereafter in the event that the Supplier still does not remedy the alleged breaches.

9.4 In case of termination of the agreement at the Supplier's fault, the Supplier also agrees not to claim payment of any amount of the price set out in 4.1 and not yet paid to him upon termination.

9.5 Without affecting any other right or remedy available to it and the provisions set out in Articles 9.1, 9.2 and 9.3 of this Agreement, either party may terminate this agreement on giving at least one month written notice to the other party. In this case:

- ETC shall pay the Supplier for any remaining costs of the deliverables already supplied and approved by ETC;
- The Supplier shall reimburse ETC for the costs of the deliverables already paid by ETC and not supplied by the Supplier.

9.6 The termination or expiry of the Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry. Nor shall the termination or expiry of the Agreement affect the provisions set out in clauses 5.4 and 6 of this Agreement.

10. SEVERANCE

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid,

legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

11. FORCE MAJEURE

Neither Party shall be deemed to be in breach of and held liable under this Agreement for any late or non-performance of any obligations under this Agreement which is caused by a Force Majeure Event. If a party asserts Force Majeure as an excuse for failure to its obligations, then it must prove that it took all reasonable steps to minimize delay or damages caused by foreseeable events, that it substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described.

12. MISCELLANEOUS

- 12.1 This Agreement shall be governed and construed in accordance with the laws of Belgium.
- 12.2 Any dispute, controversy or claim arising out of or in relation to this Agreement, or the breach, termination or invalidity thereof, shall be settled amicably by negotiation between the Parties.
- 12.3 Any dispute arising out of or in connection with this Agreement unsettled amicably shall be subject to the exclusive jurisdiction of the courts of Brussels.
- 12.4 In the text of this Agreement, terms used in the masculine form in respect of the external collaborator apply to either sex or to entities, unless the context clearly indicates otherwise.
- 12.5 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The general terms and conditions of the Supplier shall not apply.
- 12.6 ETC and/or the European Commission and any other EU Institution in charge of checks (such as for example OLAF) shall have the right, during the implementation of the Campaign as well as afterwards, to carry out technical and financial checks and audits in order to determine whether the Supplier is implementing the Campaign properly and is complying with its obligations under this Agreement. The Supplier shall therefore keep all original documents with regard to the Campaign during a period of six years following the end of this agreement.

Made in as many originals as there are parties, each one acknowledging to have received an original.

Signature for and on behalf of ETC

Eduardo Santander
Executive Director

In on

Signature for and on behalf of the Supplier

Name of legal representative
Title of the legal representative

In on

Annexes

Annex A : Tender Specifications

Annex B : the Supplier's Offer