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# AGREEMENT

## ETC CO-OP PROGRAMME 2024

### Co-branding of promotional campaigns

*DRAFT*

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**Between** The **European Travel Commission**, having its registered offices at  
1000 Brussels (Belgium), Rue du Marché aux Herbes 61;  
VAT number 0408.138.386

Hereinafter « **ETC** »  
On one side

**and** ..... having its registered offices at ..... ; VAT number.....

in his capacity of consortium coordinator

**and** ..... having its registered offices at ..... ; VAT number.....

**and** ..... having its registered offices at ..... ; VAT number.....

**and** ..... having its registered offices at ..... ; VAT number.....

**and** ..... having its registered offices at ..... ; VAT number.....

**and** ..... having its registered offices at ..... ; VAT number.....

Individually called the “**Consortium Entity**” or the “**Consortium Entities**” and  
all together « **the Consortium** »  
On the other side;

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

WHEREAS

- 1) ETC is an international non-profit-making organization, whose members are European National Tourism Organisations (NTOs) and whose role is to promote tourism to Europe.
- 2) Within the framework of its activities, ETC carries out a joint program of activities co-financed by the European Commission.
- 3) In order to implement the joint program of activities, ETC selected partners to conceive and co-finance a thematic trans-European promotional campaign.
- 4) Based on its application form (ANNEX B) (hereinafter the “**Application Form**”), the Consortium’s application was selected to be executed (hereinafter the “**Campaign**”).
- 5) This agreement (hereinafter the “**Agreement**”) is intended to set forth the relationship between ETC, the Consortium, and the Consortium Entities, as well as the financial terms and conditions of the Campaign, and the intellectual property rights on the materials generated by the Campaign.
- 6) Definitions:
  - **Campaign:** the co-branding promotional campaign proposed by the Consortium in its Application Form.
  - **Campaign Material:** all deliverables related to the Campaign, including but not limited to ads, posters, reports, promotional materials (such as brochures, leaflets, presentations, whether on paper or in electronic form, etc.), etc.
  - **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 or 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.
  - **Data Protection Legislation:** the General Data Protection Regulation ((EU) 2016/679) and any applicable EU, international and national laws on data protection, 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, trademarks 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.
  - **Suppliers:** Entities selected by ETC that will provide all the necessary services to implement the Campaign.
- 7) ETC is ready to co-finance the Campaign proposed by the Consortium on the terms and conditions hereinafter set forth.
- 8) The Consortium is ready and willing to develop this Campaign on the said terms and conditions.

**ETC and the Consortium agree as follows:**

## **1. THE PARTIES**

### **A. THE CONSORTIUM**

- 1.1 The Consortium is composed of each of the above-mentioned Consortium Entities. Each undertaking made under – or in execution of – this Agreement by the Consortium shall be deemed personally undertaken by each of the Consortium Entities themselves. The Consortium Entities expressly waive any right to annul any commitment undertaken on its behalf by the Consortium.
- 1.2 The Consortium shall be coordinated by **[name of entity]** (hereinafter the “**Consortium Coordinator**”). The Consortium Coordinator shall be responsible for liaising with ETC on behalf of the Consortium, in particular with regard to the Consortium’s reporting obligations under this Agreement.

- 1.3 The Consortium Entities acknowledge irrevocably and unconditionally that the obligations undertaken by the Consortium Coordinator on behalf of the Consortium are deemed to be undertaken directly by the Consortium.
- 1.4 The Consortium Entities will agree upon appropriate arrangements between themselves for the proper decision-making, management and implementation of the Campaign. They will assume joint responsibility towards the completion and final delivery of the Campaign.
- 1.5 Each Consortium Entity shall be severally liable to ETC for the payment of its own part of the contribution to the Campaign. In case one of the Consortium Entities fails to settle its invoice, ETC shall have the right to suspend temporarily or cancel the implementation of the Agreement without any financial implications on ETC's side.

## B. RELATIONS BETWEEN ETC AND THE CONSORTIUM

- 1.6 By virtue of this Agreement, the Consortium Entities shall not be considered under any circumstances to be members of ETC staff and shall not be subject to the Statutes and Work Regulations of ETC. ETC cannot be held liable for any damage caused or sustained by the Consortium, including any damage caused to third parties as a consequence of or during the implementation of the Campaign.
- 1.7 ETC shall not intervene in discussions within the Consortium. Whenever the Consortium disagree on any topic relating to this Agreement or the Campaign, each Consortium Entity shall take the utmost effort to resolve internal disputes, based on potential dispute resolution mechanism. In any case, the Consortium Coordinator shall communicate the Consortium final decision within two working days.
- 1.8 Any communication between ETC and the Consortium related to this Agreement must be made in writing (in paper or electronic form). For urgent matters, the communication can be made orally and confirmed in writing within two working days.

## 2. DURATION OF THE AGREEMENT

The Agreement shall start ***on the day the last party signs it*** and shall expire automatically and without prior notice upon satisfactory completion of the Campaign (reaching the KPIs and submitting the deliverables to ETC as defined in Consortium's application – ANNEX B), but no later than ***[date to be agreed with ETC]*** unless sooner terminated under the terms of this Agreement. This clause applies without prejudice to the provisions of Article 10.8.

## 3. EXECUTION OF THE CAMPAIGN

### A. OBLIGATIONS OF THE CONSORTIUM

- 3.1 The Consortium shall plan, implement and execute the Campaign in accordance with the specifications set out in the Terms and Conditions document (ANNEX A) and the KPIs defined in the Consortium's application (ANNEX B). Additional aspects of the implementation of the Campaign (such as detailed timeline and deadlines for implementation, reporting and approval) will be defined at the kick-off of the Campaign, which will be held prior to the start of the Campaign.
- 3.2 The Consortium shall plan, implement and execute the Campaign in accordance with any legal obligations it is bound by applicable EU, international and national law.
- 3.3 The Consortium Entities shall be jointly and severally liable for the planning, implementation and execution of the Campaign. Any changes to the planning, implementation and execution of the Campaign shall be notified to ETC and subject to approval by ETC. Changes of more than 10% of contract value are not allowed.
- 3.4 The Consortium Entities shall inform ETC about any copyrights on the materials provided to ETC and the Suppliers to be used in the implementation of the Campaign.
- 3.5 Each Consortium Entity shall ask ETC in due time for any supporting documents they might require under national law for the signing and execution of this Agreement.

#### **B. OBLIGATIONS OF ETC**

- 3.6 ETC shall be responsible for the overall administration of the Campaign, including (but not limited to) contractual agreements with all Suppliers and third-party providers and payment of all invoices related to the Campaign. Any decisions on the technical requirements of the procurement, the selection of Suppliers and the award of contracts shall be managed by the Consortium in coordination with ETC unless otherwise agreed. The procedures of selection of Suppliers and award of contracts must comply with the applicable procurement rules that ETC is following.

#### **4. REPORTING**

- 4.1 The Consortium shall prepare detailed reports as mentioned in Article 4.4 of this Agreement with regard to the planning, the implementation and the results of the Campaign. These reports shall be submitted to ETC for approval, after which ETC will forward them to the European Commission. The Consortium acknowledges that the reimbursement of the Campaign costs to ETC by the European Commission depends on the quality of these reports. In case of missing or incorrect information, ETC shall have the right to claim from the Consortium compensation for any missing reimbursement from the European Commission.
- 4.2 The Consortium agrees to respect the deadlines for the execution of the Campaign set out in the included in Consortium's application - Timeline (ANNEX B).

- 4.3 The Consortium shall provide ETC with regular updates on the progress of the Campaign, and all necessary reports requested by ETC including but not limited to the reports mentioned in Article 4.4.
- 4.4 The Consortium shall provide ETC at least with the following report:
- a) A final implementation report, including a detailed overview of the activities performed, description and justification of any changes in the work program, description of all project outputs (deliverables) and results against set targets and KPIs, as well as expected future impacts to be generated by the Campaign.

ETC shall set the deadline for submission of the aforementioned report based on the timeline for implementation of the promotional Campaign. Notwithstanding, the Consortium shall submit the Final Implementation Report to ETC no later than 30 calendar days after the completion of the Campaign and, in any case, no later than **31 December 2024**. The Consortium shall submit the aforementioned report in English.

## 5. FINANCIAL PROVISIONS

- 5.1 The total budget assigned to the Campaign is of **EUR .....** of which ETC shall contribute the amount of **EUR .....** (50%) exclusive of VAT and inclusive of any taxes, fees, charges and costs if applicable, and the Consortium shall contribute the amount of **EUR .....** exclusive of VAT and inclusive of any other taxes if applicable.
- 5.2 Safe for the provisions of liability contained in Article 1.5, the breakdown per Consortium Entity is mentioned in the Budget Form (ANNEX C). Each Consortium Entity shall pay its contribution net to ETC according to the payment schedule in Article 5.3.
- 5.3 The full contribution from each Entity of the Consortium is expected to be paid to ETC before the start of the Campaign and upon receipt of the invoice from ETC. ETC will not start the implementation of the Campaign including any contracting of potential Suppliers before having received the contributions paid in full by all Consortium Entities.
- 5.4 ETC shall handle all payments to third parties related to the implementation of the Campaign, including but not limited to Suppliers. All invoices related to the implementation of the Campaign have to be issued on ETC's name following the internal ETC procurement procedure.
- 5.5 ETC shall invoice each Consortium Entity separately for the amount in Euro (EUR) of their contribution to the Campaign, as specified in Consortium's application - Budget Form (ANNEX B).

- 5.6 ETC cannot cover any additional costs resulting from the execution of this Agreement and incurred because of the Consortium's requests to the Suppliers that are not part of this Agreement.

## **6. COSTS OF THE CAMPAIGN**

- 6.1 The costs of the Campaign to be covered by the ETC's and the Consortium's contribution shall meet the following criteria:
- a) be necessary for the purpose of the Campaign;
  - b) have been indicated in the estimated budget;
  - c) cover eligible actions – examples of eligible actions and non-eligible actions can be found under section 2.4 of the Terms and Conditions document (ANNEX A)
  - d) comply with the requirements of applicable tax and social regulations;
  - e) be reasonable, justified and comply with the principle of sound financial management; and
  - f) be incurred within the duration of the Agreement.
- 6.2 The costs of the Campaign that are eligible to be covered by the ETC and Consortium's contribution comprise:
- a) costs of consumables and supplies incurred by contracted third parties and can directly be assigned to the Campaign;
  - b) costs entailed by subcontracts; and
  - c) unrecoverable duties, taxes and charges.
- 6.3 The costs of the Campaign that are not eligible to be covered by the ETC's and the Consortium's contribution comprise:
- a) staff costs of the applicants; and
  - b) travel expenses of the applicants.
- 6.4 The final amount of the ETC and Consortium contributions shall depend on the extent to which the Campaign has been implemented in accordance with the terms of this Agreement. The final amount shall be reduced in proportion to the income created by the Campaign (if any) or financial contribution given by third parties external to the Consortium; these amounts shall be communicated to ETC by the Consortium as the Consortium becomes aware that profit is or will be made, or additional financial contributions will be received.
- 6.5 The final amount of ETC's contribution shall be reduced in the case of improper implementation of the Campaign (more specifically the Campaign has not been implemented or has been implemented partially or late).



- 6.6 Any amounts paid by the Consortium to ETC and not used for the purposes of the Campaign shall be paid back to the Consortium.

## **7. BRANDING AND OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 7.1 Any Campaign Material or publication made by the Consortium that relates to the Campaign, shall display the logo of Europe-visiteurope.com, the reference to the co-funding by the European Union and the EU emblem. Any failure under this Agreement shall result in the sanction foreseen in Article 10.7.
- 7.2 The Consortium and ETC shall retain ownership of the Campaign Material, including any industrial and/or Intellectual Property Rights with respect to the Campaign Material, and of the reports and other documents relating thereto. The Consortium agrees that ETC can add a provision in contracts with Suppliers, that these Suppliers shall indemnify all members of the Consortium against claims brought against any member of the Consortium, for infringement by Suppliers of a third party's rights in connection with the Campaign Material.
- 7.3 Any communication or publication that relates to the Campaign, made by the Suppliers and/or Consortium Entities 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."
- 7.4 The Intellectual Property Rights with regard to the Campaign Material shall be managed by the Consortium. In the event that the Consortium cannot agree on a specific topic and urgent decision needs to be undertaken in this respect, the Consortium Coordinator shall have a casting vote.
- 7.5 The Consortium 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 Campaign Material 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 Campaign Material or incorporate the Campaign Material into other material, and to reproduce the Campaign Material as incorporated in such other material;
  - b) to create and reproduce derivative works from the Campaign Material;
  - c) to distribute unlimited copies and display publicly the Campaign Material, whether independently or as part of other material;
  - d) to distribute unlimited copies and display publicly derivative works from the Campaign 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.

- 7.6 The Consortium grants the European Commission the right to store and archive the Campaign Material in line with the document management rules applicable to the Commission, including digitisation or converting the format for preservation or new use purposes.

## **8. PROCESSING OF PERSONAL DATA**

- 8.1 All Parties shall comply with all applicable requirements of the Data Protection Legislation. Each Party must ensure that personal data is:
- a) processed lawfully, fairly and in a transparent manner in relation to the data subjects;
  - b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
  - c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
  - d) accurate and, where necessary, kept up to date;
  - e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data is processed; and
  - f) processed in a manner that ensures appropriate security of the data.

## **9. CONFIDENTIALITY**

- 9.1 Each Party agrees not to disclose Confidential Information communicated with the other Parties during and after the execution of the Task except to the extent:
- a) permitted by this agreement; or
  - 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.
- 9.2 Each Party may disclose the other Parties' 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 Parties' confidential information comply with this clause 9.

## **10. SUSPENSION AND TERMINATION OF THE AGREEMENT**

- 10.1 Either Party may terminate this Agreement by giving written notice of 30 days to the other Party, indicating the reason for termination. Such written notice shall also indicate the date on which the termination shall take effect.
- 10.2 In case of early termination of the Agreement by the Consortium, the Consortium shall bear any costs, fees and indemnities due by ETC to its subcontractors, that cannot be recovered or will not be refunded by said subcontractors.
- 10.3 In case of termination of this Agreement before completion of the Campaign, ETC will invoice the Consortium such amounts for which the Consortium is liable under this Agreement.

If the Consortium wishes to dispute said costs, fees or indemnities, it shall do it at its own costs and under its own responsibility. ETC shall in such case transfer all its rights arising from its contractual agreements with the relevant subcontractors and provide reasonable assistance to the Consortium in such dispute.

- 10.4 ETC may terminate this Agreement in case of:
- a) a change in the Consortium's legal, financial, technical, organizational or ownership situation is likely to affect the implementation of this Agreement;
  - b) the Consortium does not implement the Campaign, or it fails to comply with another obligation under this Agreement;
  - c) ETC has evidence that the Consortium has committed substantial errors, irregularities, fraud or breach of obligations in the award procedure or while implementing the Agreement, in particular regarding the exclusion and eligibility criteria mentioned in the Terms and Conditions document (ANNEX A).
- 10.5 In case the termination of the Agreement is caused by the Consortium's, or one of the Consortium Entities', fault or gross negligence, the Consortium or the respective Entity shall be liable for all damages, including but not limited to direct and indirect losses.
- 10.6 Neither party shall be held liable for the full or partial non-fulfilment of its obligations under this Agreement, if that non-fulfilment is due to the occurrence of a factor constituting an act of God or the occurrence of 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.
- 10.7 The Consortium expressly acknowledges that any breach of Article 7.1 (obligations regarding the Campaign Material) will result in a refusal of the European Commission to reimburse any costs to ETC. Any breach under Article 7.1 will for this reason be deemed to be a severe breach, in case of which the Consortium shall also cover each and any of ETC's expenses and

funding. The Consortium will reimburse such expenses and funding at ETC's first demand and without any possibility to discuss such reimbursement.

- 10.8 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 Article 7.5.

## **11. WITHDRAWAL OF A CONSORTIUM ENTITY**

- 11.1 Any Consortium Entity may request to withdraw from this Agreement by giving written notice of 30 days to ETC, indicating the reason for withdrawal. Withdrawal shall not act to discharge any costs, fees, obligations, and indemnities due by ETC to its subcontractors under this Agreement prior to withdrawal. This clause applies without prejudice to the provision of Article 10.2.
- 11.2 If a Consortium Entity withdraws from this Agreement, under this Article, ETC together with the remaining Consortium Entities shall decide whether or not to continue the Campaign foreseen under this Agreement.
- 11.3 If ETC and the remaining Consortium Entities decide to continue the Campaign, this Agreement shall be amended to introduce the changes needed (e.g., reallocation of the tasks and the estimated budget of the terminated beneficiary; change of coordinator, etc..). Following the withdrawal of a Consortium Entity, ETC's financial contributions to the Campaign shall be re-calculated.
- 11.4 If ETC and the remaining Consortium Entities decide not to continue and to terminate the Campaign foreseen under this Agreement, ETC will invoice the Consortium such amounts for which the Consortium is liable under this Agreement and any costs, fees and indemnities due by ETC to its subcontractors, that cannot be recovered or will not be refunded by said subcontractors.

## **12. MISCELLANEOUS**

- 12.1 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 to determine whether the Consortium is implementing the Campaign properly and is complying with its obligations under this Agreement. The Consortium shall therefore keep all original documents concerning the Campaign during a period of six years following the end of the Agreement with ETC.

- 12.2 The Agreement constitutes the entirety of the agreements between the Parties. It, therefore, takes precedence over any prior agreement between the Parties in writing or verbally regarding the Campaign.
- 12.3 This Agreement, or any term thereof, may be changed or waived only by written amendment, signed by all the parties hereto. No oral understanding or agreement shall not be binding between the parties.
- 12.4 This Agreement shall be governed and construed in accordance with the laws of Belgium.
- 12.5 Any dispute arising out or in connection with this Agreement shall be subject to the exclusive jurisdiction of the Brussels Courts.

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  
Consortium**

*Entity 1*

In ..... on .....

*Entity 2*

In ..... on .....

*Entity 3*

In ..... on .....

*Entity 4*

In ..... on .....

*Entity 5*

In ..... on .....

*Entity 6*

In ..... on .....

**Annexes**

**Annex A : The Terms and Conditions document**

**Annex B: Consortium's application**

**Annex C: Campaign Budget form**

