

Subsidy Contract
for the implementation of the **CENTRAL EUROPE** project
3CE359P3; Sustainable and efficient Energy for Rural Regions
(DVR: 0000191, V 349)

The following contract between

City of Vienna, represented by
Department for EU-Strategy and Economic Development
(Magistratsabteilung 27),
Schlesinger Platz 2, A-1080 Vienna, Austria

- acting as Managing Authority of the European Territorial Cooperation Programme CENTRAL EUROPE, hereinafter referred to as MA -

on behalf of the Federal Republic of Austria, the Czech Republic, the Federal Republic of Germany, the Republic of Hungary, Italy, the Republic of Poland, the Slovak Republic and the Republic of Slovenia.

and

Aufbauwerk Region Leipzig GmbH

with its office at

Otto-Schill-Straße 1
D-04109 Leipzig
Germany

represented by

Ms Silvana Rückert

- hereinafter referred to as **Lead Partner (LP)**, meaning the lead beneficiary, as defined in Article 20(1) of the Regulation (EC) No 1080/2006

is concluded on the basis of the following clauses and in accordance with Article 15(2) of Regulation (EC) No 1080/2006, and lays down the implementing arrangements for the project "3CE359P3", "Sustainable and efficient Energy for Rural Regions"/"VIS NOVA"



§ 1
Legal framework

The provision of subsidy is based on the following legal framework and guidelines:

- Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing regulation (EC) No 1260/1999;

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- Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999;
- Commission Regulation (EC) No 1828/2006 of 8 December 2006, setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund;
- Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid;
- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 and its amendments on the financial regulation applicable to the general budget of the European Communities;
- Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as well as its amendments and related implementation provisions at national level ;
- Community rules regarding Community horizontal policies such as the rules for competition and entry into the markets, the protection of the environment, the equal opportunities between men and women and public procurement;
- National rules applicable to the Lead Partner and its Project Partners (hereinafter referred to as PPs);
- European Territorial Cooperation Operational Programme CENTRAL EUROPE 2007-2013 (CCI: 2007 CB 163 PO 061), approved by the European Commission on 3 December 2007 - Decision No C(2007) 5817 setting the strategy of the Programme (hereinafter referred to as CENTRAL EUROPE OP);
- the Agreement on the Implementation of the European territorial Cooperation Programme CENTRAL EUROPE 2007-2013” between the EU Member States taking part in the Programme and the City of Vienna, represented by the Department for EU-Strategy and Economic Development (Managing Authority) and the Department for Finance and Budget (Certifying Authority) and the Austrian Federal Chancellery, represented by the Division IV/3 as Audit Authority for the implementation on the implementation of the “CENTRAL EUROPE Programme 2007-2013”;
- the Application Manual 3rd call;
- the Implementation Manual;
- the Control and Audit Guidelines.

In case of amendment of the above mentioned legal norms, the latest version shall apply.

§ 2 Award of subsidy

1. Based on the application of the LP dated 06.05.2010 and the supplementing/amending document/s dated 21.02.2011 (altogether hereinafter referred to as “application documents”), in accordance with the decision of the Monitoring Committee of the programme (hereinafter referred to as MC), dated 3 December 2010 an earmarked subsidy is awarded to the LP for the project 3CE359P3, Sustainable and efficient Energy for Rural Regions (VIS NOVA), from funds of the European Territorial Cooperation Programme CENTRAL EUROPE 2007-2013.

Maximum ERDF amount of funding awarded:	2.166.626,25 Euro (€)
Approved CENTRAL EUROPE Partners' contribution	579.034,75 Euro (€)
Approved CENTRAL EUROPE 2007-2013 eligible project budget ¹ :	2.745.661,00 Euro (€)
Grant rate of the funding:	78,91%

2. Grant rate of the funding is understood as being the percentage rate which results from dividing the funding awarded from the programme (ERDF funding) by the CENTRAL EUROPE eligible budget of the project (ERDF funding + national co-financing by CENTRAL EUROPE Member States).
The grant rate can change in the course of the implementation of the project. However the maximum amount of approved ERDF contribution cannot be exceeded. The grant rate for the project is up to 75% of the eligible costs for partners located in the Federal Republic of Austria, the Federal Republic of Germany and Italy and up to 85% of the eligible costs for partners located the Czech Republic, the Republic of Hungary, the Republic of Poland, the Slovak Republic and the Republic of Slovenia.
3. Disbursement of the subsidy is subject to the condition that the European Commission makes the funds available to the extent described above.
4. If the European Commission fails to make the funds available due to reasons that are outside of the sphere of influence of the programme, the MA is entitled to terminate this contract and any claim by the LP against the MA for whatever reason is excluded. In this case the LP will be duly notified by the MA and guided on the respective steps to be taken.
5. The LP accepts the subsidy and undertakes to carry out the project under its own responsibility.

§ 3 Duration of the project

1. According to the supplementing/amending documents containing all changes requested by the MC decision, the project has a duration of 42 months. The project will be implemented according to the following schedule:

¹ Eligible project budget of the approved Application Form. Final figure dependent on budget consumption of partners with different cofinancing rates.

Start date: 01.05.2011
End date: 31.10.2014

2. Administrative duties of the LP and PPs related to the closure of the project will take place over a period of three months after the project finalisation (i.e.: until 31.01.2015).

§ 4

Object of use, eligibility of costs, reallocation

1. The subsidy is awarded exclusively for the project as it is described in the application documents and its annexes as approved by the MC. The approval decision of the MC and the revised application form an integral part of this contract.
2. Costs, which qualify for a subsidy pursuant to § 2.1 of this contract shall exclusively consist of eligible costs as listed in the approved application. The eligibility of costs for ERDF co-funding is regulated in Articles 7 and 13 of the Regulation (EC) No 1080/2006, in Articles 47 to 53 of the Regulation (EC) No 1828/2006, as well as in national regulations.
3. Eligible are only costs that have arisen as from the day after the submission of the Application Form, unless the project has a later starting date, without prejudice to the eligibility of preparatory costs and costs related to the negotiations of conditions prior to final approval.
4. To be considered eligible in the context of the project, costs must:
 - be necessary for carrying out the project, be provided for in the contract and comply with the principle of economy, efficiency and effectiveness as described in Article 27 of Regulation (EC) No 1605/2002;
 - have actually been incurred, be recorded in the LP's or PPs accounts, be identifiable and verifiable, and be backed by original supporting documents.
5. Changes in budget lines, work packages, budgets and partner budgets are allowed as long as the maximum amount of funding awarded is not exceeded, if provisions related to State Aid discipline are respected and if they follow the conditions below:
 - a) Without prior notification to the MA, the LP is entitled to increase the original amount in the budget line, the work packages budget (with the exception of work package "WP 0") and/or the budget of partners, as stated in the approved application. The increase is limited to a maximum of either € 20.000,- or 10% of the original amount of the budget line, the work packages and the budget of the partners².
 - b) Only once during the project period, the LP is entitled to reallocate amounts between budget lines, between work packages and/or between PPs resulting in an increase of up to 20% but to a maximum of EUR 250.000,- of the original budget of the budget line, work package budget (with the exception of work package "WP 0") and partner budget as stated in the latest approved application

² Resulting decreases in the budget of other budget lines, work packages and/or budgets of partners may exceed these thresholds as long as the implementation of the approved work plan and the partners' foreseen involvement remain unaffected.

documents³. Such reallocation requires a written application to the MA via the Joint Technical Secretariat (hereinafter referred to as JTS). It will enter into force only after written approval of the MA via the JTS.

- c) All budget changes exceeding the limits set up in point b) may be approved by the MC on a case-per-case basis.

§ 5

Request for payments

1. The LP may only request payments by providing proof of progress of the project as described in the approved application documents, in particular as described in the work packages. For this purpose the LP has to present progress reports and a final report to the MA via the JTS. These progress reports have to consist of a joint activity report and a financial report of the LP and PPs. The JTS will provide reporting forms which must be used by the LP. The preparation costs report, the six-monthly progress reports and the final report have to be submitted according to the timeframe indicated in § 5.4 of this contract. The last progress report is due according to the date set in § 3.2 of this contract.
2. The financial report shall contain the Confirmations of Control of expenditure of the LP and PPs related to the project expenditure that have been validated so far and that can be objectively imputed to the project. Confirmations of Control must be provided by the responsible public authorities or private institutions as referred to in Article 16(1) of Regulation (EC) No 1080/2006. To this end the LP verifies that each PP enables the responsible control authority /institution in the member state it is situated to validate the proper use of funds as will the LP itself.
3. The MA, through the JTS, may request relevant information at any time. That information must be supplied by the LP within the demanded time frame.
4. Based on the fact that payments by the European Commission will only be made in accordance with the corresponding budget commitments referred to in Articles 75(1) and 76 (1) of Regulation (EC) No 1083/2006, the LP must submit the progress reports - including requests for payments - according to the following timeframe:

Reporting period	Total cost	Expected payment request *	Progress/final report to be submitted to the JTS at the latest by dd/mm/yyyy
Preparation Costs	12.555,00	9.907,27	01.01.2012
05.11 - 10.11	195.972,00	154.643,30	01.01.2012
11.11 - 04.12	239.830,00	189.252,05	01.07.2012
05.12 - 10.12	256.761,00	202.612,46	01.01.2013
11.12 - 04.13	425.930,00	336.105,27	01.07.2013
05.13 - 10.13	645.230,00	509.156,90	01.01.2014
11.13 - 04.14	605.950,00	478.160,70	01.07.2014
05.14 - 10.14	363.433,00	286.788,30	01.02.2015
Total:	2.745.661,00	2.166.626,25	

*) based on grant rate of 78,91%

³ As in footnote 2.

Payments not requested in time and in full or non in compliance may be lost.

The above payment schedule is made subject to the provision that the European Commission has paid corresponding amounts beforehand.

5. The Certifying Authority (hereinafter referred to as CA), ensures that the LP receives payments of the approved contribution from the programme in time and in full. No deduction, with the exception of irregularities and/or suspicion of irregularities detected by the MA and/or the CA, retention or further specific charges which would reduce the amount of the payment shall be made. Opposite, the ERDF contribution paid by the CA shall not exceed the share of ERDF resulting from the eligible amount validated by each responsible control authority/private institution as referred to in § 5.2.
6. In case of observations and/or reservations raised by the Commission on the description of the Management and Control System of the CENTRAL EUROPE programme or in case of a system error detected, the MA and CA have the right to temporarily withhold payments to a particular beneficiary (LP or PP) or the project as a whole. Payment suspension(s) shall be lifted as soon as observations and/or reservations raised by the Commission have been withdrawn and the MA and CA have received sufficient evidence on the solution of the systemic error(s) detected.
7. The funds will be disbursed in Euro (EUR; €) only. Any exchange rate risk will be borne by the LP.
8. The LP shall install a separate accounting system for the settlement of the present project and shall safeguard that the eligible costs as well as the received subsidies can be clearly identified.

The subsidy will be transferred to the following account:

Account No (IBAN): DE 47 8605 5597 1000 8777 77
Name of the holder: Silvana Ruckert
Name of the bank: Sparkasse Leipzig
Bank code (SWIFT): WELA DE 81

Whenever possible, this account should be of specific project use.

The controller who will carry out the verifications to the LPs expenditure as foreseen in Art. 16.1 of the Regulation (EC) 1080/2006 is:

Name:
Institution:
Address:
Telephone:
Fax:
Email:

This controller has been selected in accordance with the system set up by each Member State and meets the requirements of qualification and independence presented in the CENTRAL EUROPE Control and Audit Guidelines. In case a controller cannot be named before signing the subsidy contract the information has to be

provided in the Start-up report at the latest.

Changes of address, changes of account number and changes of control authority/institution or name of controller(s) - have to be duly notified. Should the MA have any objections to the notified changes it can discuss these issues with the MC.

9. By paying out the subsidy according to this contract the MA fulfils its obligations resulting from the present contract.

§ 6

Obligations of the Lead Partner

1. According to Article 20(1) of Reg. (EC) No 1080/2006 the LP assumes the following responsibilities:
 - a) it lays down the arrangements for its relation with the other partners participating in the project in a partnership agreement comprising, *inter alia*, provisions guaranteeing the sound financial management of the funds allocated to the project including the arrangements for recovering amounts unduly paid as well as provisions ensuring that in case of replacement of one partner the new partners experience and its technical, organisational and financial capability are sufficient in order to properly participate in the project. This agreement shall also include a full list of the responsible public authorities or private institutions in charge of issuing the Confirmations of Control mentioned in § 5.2, as well as all information on identity and location of bodies holding all supporting documents relating to expenditure and controls necessary for an adequate audit trail as referred to under Article 19(1) of Regulation (EC) No 1828/2006;
 - b) it is responsible for ensuring the implementation of the entire project;
 - c) it ensures that expenditure presented by the PP participating in the project has been incurred for the purpose of implementing the project and corresponds to the activities agreed between those PPs;
 - d) it verifies that the expenditure presented by the PPs participating in the project has been validated by the controllers according to § 5.2 of this contract;
 - e) it is responsible for transferring the ERDF contribution to the PPs participating in the project.
2. The LP guarantees that it is entitled to represent the partners participating in the project and that it has established a partnership agreement. The LP guarantees furthermore that it has complied with the legal framework according to § 1 of this contract and with all the relevant legal and other requirements under the law which applies to it and to the project partners and that all necessary approvals have been obtained. The LP is obliged to contractually forward this clause in its entirety to the PP.
3. The LP guarantees that the partnership agreement provides also for a clear division, in line with the application documents, of the mutual responsibilities between all partners and of the obligation of each PP to assume responsibility in the event of any irregularity in the expenditure which has been declared.
4. The LP, according to Chapter 3.6 of the CENTRAL EUROPE OP, ensures that the project during its implementation is not fully or partly financed by other EU

Programmes.

5. The LP ensures that all supporting documents required for an adequate audit trail regarding expenditure incurred and payments made are recorded, stored on commonly accepted data carriers as referred to in Article 19 (4) of Regulation (EC) No 1828/2006 and made available for verifications according to Article 16 of Regulation (EC) No 1080/2006 as well as audits according to Articles 62 and 90 of Regulation (EC) No 1083/2006. The LP shall ensure that the PPs are made aware of these requirements.
6. The LP ensures that in case *de minimis* applies, the LP and its PPs will respect all administrative requirements necessary to ensure the implementation of Regulation (EC) No 1998/2006 and will ensure their respect, when necessary, by those actors/institutions benefitting of the actions implemented by the project. The LP is obliged to contractually forward this clause in its entirety to the PP.

§ 7

Additional obligations

In addition to the obligations of the LP as already stated in § 6 of this contract, the LP undertakes:

1. to start the project at the latest within two months after this contract has entered into force and to implement it according to the description of the work plan approved by the MC;
2. to present a Start-up report to the JTS within three months after this subsidy contract has entered into force. Details regarding the Start-up report are laid down in the Implementation Manual. In general, the Start-up report shall present the results of setting up all necessary project management structures and procedures in order to ensure a timely and sound start of the project. The Start-up report shall contain evidence that the partnership agreement mentioned in § 6.1.a) has been signed by the LP and all PPs.
3. to immediately inform the MA via the JTS, if costs are reduced or one of the disbursement conditions ceases to be fulfilled, or circumstances arise which entitle the MA to reduce payment or to demand repayment of the subsidy wholly or in part;
4. to request written approval from the MA via the JTS, if the partnership, the approved work plan, the duration, the time frame for payment reports or the budget breakdown of the project on which this contract is based change;
5. to invite the MA/JTS to participate in project Steering Committee meetings as an observer and to send minutes of these meetings to the MA/JTS;
6. to provide the independent assessors carrying out the Programme evaluation and ex post evaluation of the programme according to Articles 47 and 49 of Regulation (EC) No 1083/2006 with any document or information necessary to assist the evaluation.

§ 8

Lead Partner liability

1. The LP is liable towards the MA for:
 - a. ensuring that its PPs fulfil their obligations under this contract through the signature of a Partnership Agreement;
 - b. infringements of obligations under this contract by its PPs in the same way as for its own conduct.
2. The LP bears the overall financial and legal responsibility for the project and for the PPs.
3. If the MA demands repayment of subsidy funds in accordance with this contract, the LP is liable towards the MA for the total amount of those funds.
4. The LP shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them while the project is being carried out. The LP shall discharge the MA of all liability associated with any claim or action brought as a result of an infringement of rules or regulations by the LP or one of its PPs, or as a result of violation of a third party's rights.
5. The MA cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the LP or one of its PPs while the project is being carried out. The MA cannot therefore accept any claim for compensation or increases in payment in connection with such damage or injury.

§ 9

Validation of expenditure and Audit of projects

1. Each progress report submitted by the LP to the MA via the JTS must be accompanied by Confirmations of Control of expenditure, both at the LP and the PP level, issued by controllers referred to in Article 16(1) of Regulation (EC) No 1080/2006 ("First level controllers"), according to the system set up by each Member State and in compliance with the requirements set by the legal framework listed in §1 of this contract.
2. In cases of LP and PPs from countries having set a decentralised control system, the MA reserves the right, after agreement with the national responsible institution, to require that the controller directly selected by the LP or PPs be replaced, if considerations, which were unknown when the contract was signed, cast doubts on the controller's independence or professional standards.
3. The responsible EU auditing and, within their responsibility, the auditing bodies of the participating EU Member States or other national public auditing bodies as well as the MA and CA are entitled to audit the proper use of funds by the LP or by its PPs or to arrange for such an audit to be carried out by authorised persons. The LP and PPs will be notified in due time about any audit to be carried out on their expenditure.
4. The LP undertakes all the necessary actions to comply with the fundamental

requirements indicated in the Control and Audit Guidelines which are an integral part of this contract.

5. The LP will produce all documents required for the above controls and audits, provide any information about the project requested and give access to relevant authorities (JTS, MA, CA, Audit Authority, Commission Services and national and EU controlling institutions, national responsible public authorities or authorized private control institutions) to their business premises, to provide and give access to all the information and documents supporting the audit trail in compliance with Article 90 of Regulation (EC) No 1083/2006 and Article 15 of Regulation (EC) No 1828/2006.
6. The LP will keep all information and supporting documents related to the project three years after the closure of the programme, in any case at least until 31 December 2022, if there are not national rules that require an even longer archiving period. Other possibly longer statutory retention periods remain unaffected. This applies also to all information and supporting documents regarding a grant under the *de minimis* aid scheme.
7. The LP is obliged to guarantee that also the PPs fulfil the duties stipulated in points 4 to 6 of this paragraph and that these duties are included in the Partnership Agreement mentioned in § 6.1 of this contract.
8. The LP shall inform the JTS at the occasion of submitting a Progress Report about any audits that have been carried out by the bodies mentioned in § 9.5 of this contract.
9. If, as a result of the controls and audits any expenditure is considered non eligible according to the regulatory framework as in § 1 of this contract, the procedure described in § 10 of this contract shall apply.
10. In the name of all PPs the LP agrees, according to the Law on Data Protection 2000, Austrian Federal Law Gazette No 165/1999 as further amended, that the MA is entitled to use the data which are contained in the application documents and which are acquired in the course of the realisation and winding-up of controls of the project, and that the MA may convey these data to the organs and authorised representatives of the auditing bodies on regional, national and EU level.

§ 10

Recovery of unjustified expenditure

1. In case the MA or CA discover irregularities e.g. during the day-to-day-management of a project or in case the MA is notified of such irregularities as well as in case of breach of contract or infringement of provisions it is based on, the CA in close cooperation with the MA shall, in consultation with the respective liable MS concerned and by informing the MC, demand from the LP repayment of subsidy in whole or in part if the funds have already been paid out.
2. The LP shall ensure that the PP repays the LP any amounts unduly paid in accordance with the agreement existing between them. The repaid amount can be calculated

against the next payment to the LP or, where applicable, remaining payments can be suspended. In case of closed projects, the LP is obliged to transfer the repayment amount to the MA. The repayment amount is due within three months following the date of the letter by which the MA asserts the repayment claim; the due date will be stated explicitly in the order for recovery.

3. The rate of the late interest applied to the amount to be recovered will be calculated in accordance with Article 102(2) of Regulation (EC) No 1083/2006.

§ 11 Publicity

1. Unless the MA requests otherwise, any notice or publication by the project, including a conference or a seminar, must specify that the project has received a subsidy from the Programme funds in compliance with the requirements set by the regulatory framework in § 1 of this contract, in particular with Articles 8 and 9 of Regulation (EC) No 1828/2006 on information and publicity measures for the public and its Annex I.
2. In addition, the LP must ensure that all the PPs and itself respect the additional publicity requirements as laid down in the Implementation Manual and in the Control and Audit Guidelines which form an integral part of this contract.
3. Any notice or publication by the project, in whatever form and on or by whatever medium, including the Internet, must specify that it reflects the author's views and that the MA and the programme bodies are not liable for any use that may be made of the information contained therein.
4. The MA and the Member States shall be authorised to publish, in whatever form and on or by whatever medium, including the Internet, the following information:
 - a) the name of the LP and its PPs,
 - b) the purpose of the subsidy,
 - c) the amount of funding awarded and the proportion of the total cost of the project accounted for by the funding,
 - d) the geographical location of the project,
 - e) abstracts of progress reports and of final report,
 - f) whether and how the project has previously been publicised.
5. The MA on behalf of the MC and of other CENTRAL EUROPE promoters at national level is entitled to use the outputs of the project in order to guarantee a widespread publicity of such deliverables and to make them available to the public. The LP agrees that the outputs are forwarded by the MA to the Member States taking part in the Programme in order to enable them to spread the outputs likewise.

6. For the purpose of meeting the objectives as set out in § 11.5 the LP has to ensure that the outputs are available for the MA.

§ 12

Ownership - Use of outputs

1. Ownership, title and industrial and intellectual property rights in the results of the project and the reports and other documents relating to it shall, depending on the applicable national law, vest in the LP and/or its PPs.
2. Where several members of the partnership (LP and/or PPs) have jointly carried out work generating outputs and where their respective share of the work cannot be ascertained, they shall have joint ownership of it/them. The partnership agreement as mentioned in § 6.1 of this contract shall establish provisions regarding the allocation and terms of exercising that joint ownership.
3. Outputs as covered within in the meaning of Article 57 of (EC) Regulation No 1083/2006 cannot be transferred within the period set by this regulation.

§ 13

Revenues

1. Earnings generated during the project implementation through the sales of products and merchandise, participation fees or any other provisions of services against payment must be deducted from the amount of costs incurred by the project. This deduction will be made in full or pro-rata depending on whether it was generated entirely or partly by the co-financed project.
2. Should the project be identified as revenue-generating in accordance with the definition provided in Article 55(1) of Regulation (EC) No 1083/2006, the MA is entitled to deduct from the final request for payment the estimated net revenue that may be generated by the project.

In order to define the amount to be deducted, the MA shall take into account the criteria listed in Article 55(2) and (3) of the aforementioned Regulation (and its amendments).

3. Where, at the latest three years after the closure of the programme, it is established that a project has generated revenue that has not been taken into account, such net revenue shall - in line with Art 55 (4) of the aforementioned regulation (and its amendments)- be deducted by the certifying authority at the latest on submission of the documents for the operational programme referred to in Article 89(1)(a). The application for payment of the final balance shall be corrected accordingly.

§ 14

Assignment, legal succession

1. The MA is entitled at any time to assign its rights under this contract. In case of

- assignment the MA will inform the LP without delay.
2. The LP is in exceptional cases and in well-founded circumstances allowed to assign its duties and rights under this contract only after prior written consent of the MA and the MC.
 3. In case of legal succession, e.g. where the LP changes its legal form, the LP is obliged to transfer all duties under this contract to the legal successor. The LP shall notify the MA about any change beforehand.

§ 15

Termination and repayment

1. In addition to the right of termination as laid down in § 2.4 the MA is entitled, in whole or in part, to terminate this contract and to demand repayment of subsidy, if
 - a) the LP has obtained the subsidy through false or incomplete statements; or
 - b) the project has not been or cannot be implemented, or it has not been or cannot be implemented in due time; or
 - c) a change has occurred in the project that has put at risk the achievement of the results planned in the approved application, or
 - d) the project outputs and results are not in line with those promised in the approved application; or
 - e) the LP has failed to submit required reports or proofs, or to supply necessary information provided that the LP has received a written reminder setting an adequate deadline and explicitly specifying the legal consequences of a failure to comply with requirements, and has failed to comply with this deadline; or
 - f) the LP has infringed its duty to ask for prior written approval where indicated by this contract or has failed to immediately report events delaying or preventing the implementation of the project funded, or any circumstances that mean a change of the disbursement conditions and frameworks as laid down in this contract; or
 - g) the LP has obstructed or prevented the financial control and auditing as indicated in § 9 of this contract or
 - h) the amount of funding awarded has been partially or entirely misapplied for purposes other than those agreed upon; or
 - i) insolvency proceedings are instituted against the assets of the LP or insolvency proceedings are dismissed due to lack of assets for cost recovery, provided that this appears to prevent or risk the implementation of the programme objectives, or the LP closes down; or
 - j) the provisions of § 11 point 6 and 12 points 3 of this contract are infringed or the LP does - for any other reasons - not make available the outputs to the MA; or
 - k) regulations of EU-law including the horizontal policies or national regulations have

been violated; or

- l) it has become impossible to verify that the final progress report is correct and thus the eligibility of the project by funding from CENTRAL EUROPE Programme, or
- m) the LP has failed to fulfil any other conditions or requirements for assistance stipulated in this contract and the provisions it is based on, notably if these conditions or requirements are meant to guarantee the successful implementation of the programme objectives.

Prior to or instead of terminating the contract as provided for in this article, the MA may suspend payments as a precautionary measure, without prior notice.

- 2. If the MA exercises its right of termination and the LP is demanded full or partial repayment of amounts already paid, the LP is obliged to transfer the repayment amount to the MA. The repayment amount is due within three months following the date of the letter by which the MA asserts the repayment claim; the due date will be stated explicitly in the order for recovery.
- 3. If the MA exercises its right of termination, offsetting by the LP is excluded unless its claim is undisputed or recognised by declaratory judgement.
- 4. If the MA exercises its right of termination and the LP is demanded full or partial repayment of amounts already paid, the amount repayable shall be subject to interest. The interest rate will be determined in accordance with Article 102(2) of Regulation (EC) No 1083/2006.
- 5. Bank charges incurred by the repayment of amounts due to the MA shall be borne entirely by the LP.
- 6. If any of the circumstances indicated in the aforementioned point 1 of this paragraph occur before the full amount of subsidy has been paid to the LP, payments may be discontinued and there shall be no claims to payment of the remaining amount.
- 7. Any further legal claims shall remain unaffected by the above provisions.

§ 16

Force majeure

- 1. Force majeure shall mean any unforeseeable and exceptional event affecting the fulfilment of any obligation under this subsidy contract, which is beyond the control of the LP and PPs and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available for the purpose of performing this contract and affecting the project performance, including, for instance, anomalies in the functioning or performance of product or services, labour disputes, strikes or financial difficulties do not constitute force majeure.
- 2. If the LP or PPs are subject to force majeure liable to affect the fulfilment of its/their obligations under this subsidy contract, the LP shall notify the MA via the JTS without delay, stating the nature, likely duration and foreseeable effects.
- 3. If the MA is subject to force majeure liable to affect the fulfilment of its obligations within the framework of this subsidy contract, it shall notify it to the LP without

delay, stating the nature, likely duration and foreseeable effects.

4. Neither the LP nor the PPs shall be considered to be in breach of their obligations to execute the project if it has been prevented from complying by force majeure. Where LP or PPs cannot fulfil their obligations to execute the project due to force majeure, grant for accepted eligible expenditure occurred may be made only for those activities which have actually been executed up to the date of the event identified as force majeure. All necessary measures shall be taken to limit damage to the minimum.

§ 17

Litigation

1. This contract is governed by and construed in accordance with the laws of the Federal Republic of Austria.
2. In case of disputes between the MA and the LP, presumption of the good faith from the LP will be privileged and, prior to litigation, mediation procedures shall be set in place.
3. In case of litigation the venue is the court of competent jurisdiction at the seat of the Administration of the City of Vienna (location 1010 Vienna, City Hall). Legal proceedings will be in German.

§ 18

Concluding provisions

1. All correspondence with the MA/JTS under this contract must be in English and has to be sent to the following address:

CENTRAL EUROPE
Joint Technical Secretariat
Museumstrasse, 3/A/III
1070 Vienna, Austria
email: info@central2013.eu

2. If any provision in this contract should be wholly or partly ineffective, the parties to this contract undertake to replace the ineffective provision by an effective provision which comes as close as possible to the purpose of the ineffective provision.
3. Moreover, the provisions mentioned in § 1 of this contract (as amended from time to time) shall apply and the rights and obligations derived thereof become part of this contract.
4. Amendments and supplements to this contract and any waiver of the requirement of the written form must be in written form and have to be indicated as such.
5. Any costs, fees or taxes not eligible or any other duties arising from the conclusion or implementation of this agreement shall be borne by the LP.
6. Two copies will be made of this agreement; of which each party keeps one. The LP is free to accept and sign this contract within two months after having been offered it by the MA (date of the submission by e-mail). After two months the offer of the MA

loses any relevance.

7. This contract remains valid as long as any duties linked to the ERDF subsidy might be claimed and in any case at least until 31 December 2022.


Leipzig, 02.05.2011.....
(Place + Date)

Vienna, 14th June 2011.....
(Place + Date)

Silvana Pückerl - director
(Name(s) Signer(s) Lead Partner and function)

CHRISTIANE BOREZNIK
(Name(s) Signer(s) MA)


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Fax: +49 (0)341 1 40 77 9-11
Projektwirtschaft für Region und Europa
.....
[Signature]
(Signature + Stamp)


.....
[Signature]
(Signature + Stamp)

Annexes:

- Updated Application Form - including the fulfillment of conditions set by the MC
- Decision of the CENTRAL EUROPE MC

The following documents, which are an integral part of this contract, can be downloaded from the Programme's website www.central2013.eu:

- Control and Audit Guidelines
- Application Manual⁴
- Implementation Manual
- EC Regulations

⁴ The specific Manual of the application round in which the project has been approved applies.

SP