

## Cooperation Agreement

between

**Deutsche Gesellschaft für  
Internationale Zusammenarbeit  
(GIZ) GmbH  
Dag-Hammarskjöld-Weg 1-5  
65760 Eschborn  
("GIZ")**

And

**Confederação Nacional de Municípios  
SCRS 505, Bloco C Lote 01, 3º Andar  
Brasília DF 70350-530, Brazil  
("CNM")**

(hereinafter referred to as "the Partners")

### Preamble

The Partners submitted a joint offer concerning the implementation of the project "**International Urban Cooperation: Sustainable and Innovative Cities and Regions – Regional Action Latin America**" (hereinafter referred to as the "Project"). On this basis, *the European Union Delegation to Brazil* (hereinafter referred to as the "Client"), entered into a contract for the implementation of this Project with GIZ as Lead Company, signed on 22.11.2016 (contract **PI/2016/380-146** "International Urban Cooperation"). Based on the joint offer and the Client's order, CNM shall cooperate with GIZ in implementing the Project and agree as follows:

- 1. Meeting of Partners**
  - 1.1 Each Partner shall appoint a representative to the Meeting of Partners. The meeting shall be chaired by the representative appointed by GIZ.
  - 1.2 The Meeting of Partners shall decide all fundamental questions and issues which are not reserved for decision by GIZ under the present cooperation agreement. All decisions of the meeting of Partners shall be binding on the Partners.
  - 1.3 GIZ shall convene the Meeting whenever necessary, but in any case at least once a year. The Meeting of Partners may also meet in the form of a telephone conference. The results of such a telephone conference shall be documented by GIZ in writing and confirmed by the Partners. Decisions by the Partners may also be made by post by way of a written vote. For meetings in person, each Partner will bear its own costs related to the travel and accommodation costs unless reimbursed by the Client.

A handwritten signature in blue ink, likely belonging to a representative of GIZ.A handwritten signature in blue ink, likely belonging to a representative of CNM.A handwritten signature in blue ink, likely belonging to a representative of CNM.

- 1.4 All decisions by the meeting of Partners should be unanimous. If the Partners fail to reach a unanimous decision, then GIZ as Lead Company shall decide.
- 1.5 At its inaugural meeting, the Meeting of Partners should adopt rules of procedure to be observed in the formal execution of its work.

## **2. Function of the Lead Company**

2.1 GIZ's task shall be to lead performance of the order in accordance with the resolutions adopted by the Meeting of Partners.

2.2 This shall include in particular

- a. coordinating the Partners' work and services,
- b. representing the contractor's interests vis-à-vis the Client and other relevant persons and institutions,
- c. conducting correspondence with the Client; all correspondence affecting material interests of the other Partners shall be agreed in consultation with these before mailing,
- a. drawing up a schedule for the work and services to be rendered by the Partners;
- e. handling payment transactions between GIZ and the Client on the one hand, and between GIZ and the Partners on the other.

2.3 The Partners shall assist GIZ in carrying out its Lead Company tasks to the best of their abilities and make the necessary information and documents available in a timely manner. The other Partners shall approach the Client and the beneficiary (project partner) in connection with project implementation only with the prior approval of GIZ.

## **3. Services to be provided and remuneration**

3.1 Each Partner undertakes to GIZ to perform the work and services assigned to it in the joint offer, the resulting order to GIZ and in the schedule of tasks and responsibilities in Annex 1 in a proper and timely manner in accordance with the specifications in the order.

3.2 The precise arrangements for the assignment of all the experts to be assigned shall be agreed on in advance with the Team Leader.

3.3 Each Partner shall invoice GIZ for the work and services it has provided according to the terms laid out in Annex 1.

3.4 The invoices, reports, evidence and other documents required under the contract with the Client for the purpose of invoicing the Client shall be submitted to GIZ by the Partners for their respective share of work and services at least 2 weeks prior to the next settlement date given in the contract with the Client. If the requisite documents are not submitted to GIZ in full or if they are submitted late, this may result in the corresponding invoice amounts not being invoiced to the Client until the subsequent accounting period and thus in corresponding delays in payments to the Partner.

3.5 In their relationship with GIZ the Partners shall assume the obligations and risks arising out of the contract concluded with the Client as if each Partner had entered into a separate contract with the Client for its share of the work and services. Each Partner shall accordingly bear the risk of performance and compensation arising out of the contractual relationship with the Client and relating to its share of the work and services itself.

- 3.6 If a Partner falls behind schedule in meeting its obligations to the extent that compliance with important deadlines is jeopardised, GIZ is entitled - after a reminder to the Partner concerned giving the Partner reasonable time to effect remedial action has been unsuccessful - to transfer the overdue work and services to another Partner or to carry these out itself, in either case at the defaulting Partner's expense.

#### **4. Invoicing, payments**

- 4.1 Each Partner shall invoice GIZ for the work and services it has provided for the Client's order. To this end, the Partner shall observe the invoicing regulations stipulated in the contract with the Client as well as those given in Annex 2. For the said work and services, the Partners shall receive the remuneration specified in the contract with the Client as well as any reimbursable costs insofar as both are accepted by the Client. All direct and indirect expenses shall be settled therewith.
- 4.2 GIZ shall make calls for disbursement by the Client for the instalments contractually agreed in the terms of payment and for other amounts due. These amounts shall be distributed between the Partners in accordance with the work and services invoiced considering the following:
- CNM cannot request from GIZ the payment of fees rejected and not paid by the Client to GIZ.
  - All performances and/or deliveries must be made by Infyde in a mutually agreed schedule between Infyde and the GIZ in advance of the timetable set out in the Main Agreement in order to ensure that all performances and/or deliveries will be delivered on time according to the Main Agreement.
  - CNM will invoice the fees due bi-annually following the interim invoice schedule in the Main Agreement, Special Conditions, art. 29. After receipt of the corresponding Client payments on GIZ's account, GIZ shall forward the amounts due to the Partners without delay, however no later than 20 days from GIZ receiving payment from the Client for the respective Interim Payment as per art. 29, following deduction of the Lead Company fees and any amounts required for the joint budget. If Client payments are not sufficient to remunerate the Partners for their work and services, the shortfall shall be apportioned in accordance with the shares of the Partners in project implementation, unless otherwise decided by the Meeting of Partners.
- 4.3 CNM shall bear the costs of banking fees for payments and any foreign exchange differences for its own share.
- 4.4 The invoices, reports, evidence and other documents required under the contract with the Client for the purpose of invoicing the Client shall be submitted to GIZ by the Partners for their respective share of work and services at least 2 weeks prior to the next settlement date given in the contract with the Client. If the requisite documents are not submitted to GIZ in full or if they are submitted late, this may result in the corresponding invoice amounts not being invoiced to the Client until the subsequent accounting period and thus in corresponding delays in payments to the Partner.

#### **5. Insurance**

Each Member undertakes to take out appropriate insurance, including professional indemnity and third party liability insurance against damage to persons and property. Each Member will send after signing of this contract evidence about the liability insurance. The GIZ can ask for annual evidence.

#### **6. Cooperation in a spirit of trust**

The Partners undertake to cooperate in good faith and to refrain from any action which is incompatible with the meaning and purpose of the present cooperation agreement and the order placed.

## **7. Prohibition of competition**

The Partners may not enter into any other agreement directly or indirectly with the Client or possible competitors with respect to the present order for the duration of the present cooperation agreement.

## **8. Exchange of information, confidentiality**

8.1 Each Partner is obliged to provide the other Partners with all material information (e.g. to solve interface problems which may arise in connection with performance of the order).

8.2 The Partners undertake to treat all business and operating secrets of the other Partners as confidential (to the extent that they become aware of these in the context of carrying out the present agreement). The Partners receiving documents, drawings and other information related to the present cooperation agreement from other Partners may use these only for the purposes of the present agreement. The Partners undertake to impose this obligation of secrecy on all persons or firms collaborating on implementing the agreement.

8.3 The obligations of the preceding paragraph remain in force beyond the end of the present agreement.

## **9. Publications, copyright**

9.1 The Partners shall not make any publications relating to the Project without prior approval of the other Partners. A brief description of the order and the scope of activities for a Partner's PR work does not require approval. Each Partner is obliged to ensure that its subcontractors also comply with this provision.

9.2 For all property rights, applications for property rights, inventions, design documentation, processes, documents and work results arising from or procured in performing the agreement, use or exploitation outside the order by one or more Partners is permitted only with prior approval of the other Partners and following authorisation by the Client.

9.3 If GIZ is obliged under the contract with the Client to transfer to the Client or other persons rights of use with respect to work results obtained during project implementation or to supplies provided, and these work results or supplies relate to the share of the other Partners in the work and services, these Partners shall transfer the rights of use.

## **10. Term of agreement, withdrawal and exclusion**

10.1 The present agreement shall enter into force when it has been signed by all parties to the agreement and shall end when all work and services have been provided to the Client and all obligations of the Partners are fulfilled. Up to this point in time, a Partner may withdraw from the cooperation only with the agreement of the other Partners and following authorisation by the Client.

10.2 If a Partner ceases payments or an application is made to open insolvency proceedings regarding its assets, it may be excluded from the cooperation by resolution of the other Partners and following authorisation by the Client. The same shall apply if a Partner grossly violates its obligations. The share of the excluded Partner shall be taken over by the other Partners in accordance with arrangements determined by the Meeting of Partners.

## **11. Amendments, validity**



28/11/2016



- 11.1 Amendments and supplements to this agreement and cancellation of the agreement shall be in writing. This shall also apply to an agreement cancelling this requirement for written form.
- 11.2 If one or more of the provisions of the present agreement is invalid, this shall not affect the validity of the remaining provisions. The Partners shall agree to replace the invalid provision by a provision that ensures the commercial success intended by the Partners in a suitable manner.

## 12. Applicable law, arbitration procedure

- 12.1 The present agreement is subject to the law of the Federal Republic of Germany.
- 12.2 Factual and legal findings established in the context of a legal dispute or arbitration proceedings with the Client with reference to the order shall also apply accordingly between the Partners.
- 12.3 All disputes arising out of the present agreement shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators to be appointed in accordance with these Rules. The arbitral tribunal shall meet in Eschborn. The language of the proceedings shall be the language in which this agreement is written.

## 13. Copies

The present agreement is drawn up in two copies. Each Partner shall receive one copy.

Brussels, 28/11/2016,

i.V.

  
**Eleni Andrikopoulou**

Regional Director Europe

Deutsche Gesellschaft für  
Internationale Zusammenarbeit  
GmbH International Services

i.A.


  
**Elena Fernández Frontán**

Project Manager


Deutsche Gesellschaft für  
Internationale Zusammenarbeit  
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Brasilia,

28/11/2016

  
**Gustavo de Lima Cezário**

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**Eduardo Gonçalves Tabosa Júnior**

Secretary General  
Confederação Nacional de Municípios

### Annexes

Annex 1 – Services and Payment

Annex 2 – Background to the pre-bid agreement signed on 19/07/2016 between GIZ and CNM, still applicable.

## Annex 1 – Services and Payment

- General description of the share of work and services of CNM

### EXPERT DAYS

Name or title of function/category of experts to be assigned	Number of working days	Lump-sum per working day	TOTAL amount foreseen for CNM
Short-term experts	140	430 EUR	60200 EUR

The following items shall be procured:

- Mobilising Senior and Junior Local Experts
- Contributing to development of the mission, vision and work strategies of the project and Working closely with the Team Leader and long term experts,
- Coordination with the different stakeholders on the operational level. CNM will fulfil the function of a liaison between the contractor and the local government, helping to ensure smooth contact management and dynamic communication.
- Facilitating relationship with national bodies in Brazil and in the countries of FLACMA's members in Latin America and the Caribbean
- Ensuring coordination between the key experts and the cities affiliated to CNM and FLACMA

### **Please note:**

- CNM will contract up to 140 short-term expert days throughout the total project duration, the exact timing of which will have to be agreed in advance with GIZ and the Team Leader, and can only take place after approval of the Client.
- For each of those 140 working days (to be documented by Client-approved timesheets) GIZ will pay to CNM 430 EUR.
- So in total it is foreseen that CNM will receive from GIZ 60200EUR (sixty-thousand and two-hundred Euros) to deliver the CNM's contribution.
- It is up to CNM to decide on the break-down of the 430EUR lump-sum per working day: regardless of the rates of seniors and junior experts, CNM can claim from GIZ the full 430 lump-sum (provided the timesheet has been accepted by the EU) and use part of that to cover also some of CNM's structural costs and backstopping activities as described in the above items to be delivered by CNM.

As a rule, costs in foreign currency are to be converted on the basis of the conversion rates given in the monthly GIZ conversion lists that the Partner is able to download. This conversion procedure is limited to those countries in which a quotation of exchange rates is guaranteed by a functioning banking sector and in which there is no split or black foreign-exchange market. Any arrangements that deviate from the norm are to be specified in the agreement. In these cases, foreign-currency costs will be reimbursed only if a corresponding foreign-exchange purchase voucher is attached to the invoice. GIZ reserves the right to modify the conversion procedure at any time during the term of an ongoing agreement. Any change to the conversion procedure shall come into force as of the date specified in the written declaration to this effect by GIZ.

### INCIDENTAL EXPENDITURE

GIZ as leader of the Consortium confirms that it is ready to propose that at least 200000 EUR (two-hundred-thousand Euros) out of the Incidental Expenditure Budget will be reserved for CNM, while:

- That budget would need to be allocated to items eligible to be reimbursed by EU as part of the Incidental Expenditure budget and would be paid against receipt of eligible invoices.
- The planning of such budget will be done during implementation closely between CNM and GIZ as GIZ will need to seek the prior written approval of the EU for any items over 15000EUR.

## Annex 2 – Background on this pre-bid agreement

As context for the pre-bid, below a few extracts from the technical offer in regards to:

Our consortium as a whole:

An **experienced and capable consortium** with a **streamlined decision making**. Our proposal comprises complementary European and LAC partners. It puts at the centre of the strategy the Project Core Team (PCT) as a facilitator. To maximise its impact as facilitator, two of our consortium members (FLACMA through CNM and EURADA) fulfil the role of multipliers, i.e. beyond providing contents directly, they allow our LAC project partners to draw on a maximum number of EU cities and stakeholders, which is significantly larger than the knowledge that any single company could possibly have provided. By regarding FLACMA and EURADA as multipliers as well as INFYDE and Rambøll for technical contents review, we allow for contents to be drawn **from EU member states and from LAC cities**, thus achieving a **truly open platform** for EU-Latin American decentralised cooperation. We propose to build up and maintain a **network of LAC institutions** which will be involved in specific activities, with the goal to engage as many local stakeholders as necessary without institutional constraints and addressing specific needs as the project evolves.

The overall role / asset of CNM as a member of the consortium:

### CNM tasks and responsibilities

- Mobilising **Senior and Junior Local Experts**
- Contributing to development of the **mission, vision and work strategies** of the project and Working closely with the Team Leader and long term experts,
- Coordination with the **different stakeholders** on the operational level. CNM will fulfil the function of a **liaison between the contractor and the local government**, helping to ensure smooth contact management and dynamic communication.
- Facilitate relationship with **national bodies** in Brazil and in the countries of FLACMA's members in Latin America and the Caribbean

In regards to the 140 working days that CNM can invoice to GIZ at a rate of 430EUR per working day according to the CNM/GIZ pre-bid agreement, it is important to note that:

- CNM will contract up to 140 short-term expert days throughout the total project duration, the exact timing of which will have to be agreed in advance with GIZ and the Team Leader, and can only take place after approval of the Client (Client= European Union, represented by the Delegation).
- For each of those 140 working days (to be documented by Client-approved timesheets) GIZ will pay to CNM 430 EUR.
- So in total it is foreseen that CNM will receive from GIZ 60200EUR (sixty-thousand and two-hundred Euros) to deliver the CNM's contribution.
- It is up to CNM to decide on the break-down of the 430EUR lump-sum per working day: regardless of the rates of seniors and junior experts, CNM can claim from GIZ the full 430 lump-sum (provided the timesheet has been accepted by the EU) and use part of that to cover also some of CNM's structural costs and back-stopping activities as described in the above items to be delivered by CNM.

This was reflected in the draft pre-bid agreement in its Annex 1 and comes to a total amount of 60200EUR.

Name or title of function/category of experts to be assigned	Number of working days	Lump-sum per working day	TOTAL amount foreseen for CNM
Short-term experts	140	430 EUR	60200 EUR

In addition to the 140 working days that CNM can invoice to GIZ (at a rate of 430 EUR/working day), CNM can also expect to cover some costs through the incidental expenditure budget (see section 7.5 of the ToRs of this project published by the EU), but please note that this is a 'reimbursable' budget (not based in lump-sums but rather on provision of original vouchers which will be reimbursed) and that prior approval from the EU is needed when exceeding 15.000EUR. Therefore, the planning for the incidental expenditure would be also jointly made at the inception phase of the project –

which means the estimated amounts and distribution of work would be made only after award of the contract, not at this tendering stage. But we can confirm that items such as the costs of making and distributing newsletters for the project would be 100% covered by the incidental expenditure budget. For ease of reference, the list of items foreseen by the ToRs (section 7.5) under incidental expenditure budget is copied in the image of the next page.

So for example, for the activity 3.2 within the task 3 of 'Networking and knowledge exchange', besides the expert days mobilised (which can include also some CNM days out of the above-described allocation), the project can use also the incidental expenditure budget, so the costs of the trainings will also be 100% covered and if CNM is organising one (or several) of those trainings, then all the costs would be reimbursed on provision of original invoices.

3.3 Provide ad hoc trainings for cities and or regions	KE 1+2 STE	A total of 12 tailor-made training for cities and/or regions (4 trainings activities per year). This will depend on the needs to be assessed during the inception phase.
INCIDENTALS		

You will see in the items below (section 7.5 of ToRs) that for example all the costs of running the help-desk function such as telecommunications costs will also be covered under the incidental expenditure budget. So if CNM is supporting that activity, you do not need to calculate now for those costs as they would be 100% reimbursed by the project. The calculation of how much incidental expenditure budget will be used through CNM cannot be done before the award of the contract to GIZ as it needs to happen in the inception phase, but there is no a-priori limit: as long as it fits with the project planning, GIZ has no objection to allocate budget to CNM. GIZ will propose as a minimum 200000EUR through CNM.

As stated in section 7.5 of the ToRs, the incidental expenditure consist of the items below:

#### 7.5 Incidental expenditure

The Provision for incidental expenditure covers ancillary and exceptional eligible expenditure incurred under this contract. It cannot be used for costs which should be covered by the Contractor as part of its fee rates, as defined above. Its use is governed by the provisions in the General Conditions and the notes in Annex V to the Contract. It covers:

- Travel costs and subsistence allowances for missions, outside the normal place of posting, undertaken as part of this contract. Costs for CO2 offsetting of air travel may be included. CO2 offsetting shall in that case be achieved by supporting CDM/Gold Standard projects (evidence must be included as part of the supporting documents) or through airplane company programmes when available.
- Costs related to the organisation of project events including travel in economy class, visa costs and accommodation and/or per diems of the participants and speakers. Project events should foresee interpretation.
- Travel costs and subsistence allowance of participants to the global International Urban Cooperation programme annual event.
- Travel costs and subsistence allowance of stakeholders participating in events on behalf of the project where the events have been approved by the Contracting Authority.
- Travel costs and subsistence allowance for city internships.
- Costs related to knowledge management, communication and visibility activities including project website, publications, videos and visibility materials.
- Costs related to the running of the helpdesk function, including email and phone costs.
- Software costs related to content production for the on-line platform and European business and expert database.
- Costs of translation of documents necessary for project activities including communication on the on-line platform;

Please remember that in tenders for technical assistance service contracts, the project planning outlined in the technical offer should be considered indicative, and will have to be continuously updated according to the requirements of overall

programme implementation with the agreement of the EU. The same holds true for the use of the budget for incidental expenditure that can only be tentatively allocated. The budget planning starts in the inception phase. So GIZ can commit here to the minimum (60200EUR for 140 junior short-term days) and additional items (such as division of incidental budget) will come later. GIZ will propose as a minimum 200000EUR of incidental expenditure budget to be contracted through CNM for items confirmed as eligible to be reimbursed by EU.

Coming back to the 140 working days that CNM can invoice to GIZ at a rate of 430EUR per working day, we can also re-confirm that it is out of the margin generated per day that CNM can cover some backstopping activities.

Please note that while CNM will help for example in involving new cities by making use of the existing channels of communication that have been established by the LAC and European institutions and networks, most of the actual backstopping work will actually be done by the project's local assistants, so CNM does not need to foresee any budget for that.

During the project's inception phase, GIZ and CNM will hold together a workshop to fine-tune the details of the pre-bid agreement in order to:

- clarify which exact tasks will be undertaken by the project assistant that will be recruited by the Team Leader so that there are no overlaps or misunderstandings during project implementation;
- and to ensure that the work that will be asked of CNM will be covered either by the foreseen number of days above-described, or paid for through the incidental expenditure.



28/11/2016

