



RESPONSE

Integrated Solutions for Positive Energy
and Resilient Cities

Integrated Solutions for Positive
Energy and Resilient Cities

SUB-GRANT AGREEMENT –

Dijon 3rd Open2Horizon Innovation Challenge

V1.2 – 2nd September 2024



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Table of Contents

1. Contracting parties	4
2. Preamble	4
ARTICLE 1. PURPOSE OF THE AGREEMENT	5
ARTICLE 2. ENTRY INTO FORCE, DURATION AND TERMINATION.....	5
ARTICLE 3. OBLIGATIONS OF THE BENEFICIARY	6
ARTICLE 4. LIABILITIES	6
ARTICLE 5. BREACH OF CONTRACTUAL OBLIGATIONS.....	7
ARTICLE 6. FINANCIAL PROVISIONS.....	8
ARTICLE 7. CONFIDENTIALITY.....	9
ARTICLE 8. INTELLECTUAL PROPERTY.....	10
ARTICLE 9. FORCE MAJEURE.....	11
ARTICLE 10. DATA PROTECTION OBLIGATIONS.....	11
ARTICLE 11. INFORMATION AND COMMUNICATION TOWARDS THE EC	11
ARTICLE 12. FINANCIAL AUDITS AND CONTROLS.....	12
ARTICLE 13. MISCELLANEOUS PROVISIONS.....	13
ARTICLE 14. APPLICABLE LAW AND SETTLEMENT OF DISPUTES	14
Appendix 1: The Project	15
Appendix 2: Guide for applicants	15
Appendix 3: Financial information of the Beneficiary.....	15
Appendix 4: Background (if applicable).....	15

1. Contracting parties

This Agreement is entered into by and between:

on the one part,

Dijon Métropole, organized under the laws of France, established in 40, Avenue du Drapeau, 21000 DIJON, duly represented by its President, François REBSAMEN so, hereinafter referred as the “**Contractor**” or “**Dijon**”.

AND

on the other part,

[Name], with VAT number [...], organized under the laws of [...], established in [address], duly represented by [name of legal representative and position], hereinafter referred as the “**Beneficiary**”.

hereinafter referred as the “**Beneficiary**”

The Contractor and the Beneficiary are hereinafter referred to individually as the “**Party**” and collectively as the “**Parties**”.

The Parties agree to the following terms and conditions including those in the following Annexes, which form an integral part of this Sub-Grant Agreement (hereinafter the “**Agreement**”).

2. Preamble

Whereas the European Commission (hereinafter referred as the “**EC**”) and the RESPONSE Consortium have signed the Grant Agreement no. 957751 (hereinafter the “**Grant Agreement**”) for the implementation of the project “Integrated Solutions for Positive Energy and Resilient Cities” (hereinafter the “**RESPONSE Project**”) within the framework of the European Union’s Horizon 2020 Research and Innovation programme.

Whereas the Grant Agreement involves financial support to selected third parties through a cascade funding scheme.

Whereas, following the extension call launched in the framework of the 3rd Innovation Challenge of Dijon, the Beneficiary has been selected to benefit from financial support in order to implement its innovative solution entitled “[name of the beneficiary's project]”, as described in **Appendix 1 – The Project** to this Agreement (hereafter the “**Project**”).

Whereas the Contractor is willing to provide financial support to the Beneficiary for the implementation of the Project and the Beneficiary is willing to receive such funding and implement the Project under the terms and conditions of this Agreement and its appendices.

Whereas the Contractor mandates the cluster Cap Digital to participate in the organization and management of the Project (hereinafter referred to as the "Organizer").

Whereas the funds received by the Beneficiary are the property of the EC, the contractor being a simple holder and manager of the funds.

Now therefore it has been agreed as follows:

ARTICLE 1. PURPOSE OF THE AGREEMENT

This Agreement defines the rights and obligations of the Parties and the conditions applicable to the grant awarded to the Beneficiary for the implementation of the Project as described in **Appendix 1 – The Project**.

ARTICLE 2. ENTRY INTO FORCE, DURATION AND TERMINATION

2.1 Entry into force and duration

This Agreement shall enter into force on the date of its signature by the last Party, for a period of 12 months.

The Parties shall not sign this Agreement until the Contractor has received from the Beneficiary the following documents:

- *Enterprise VAT-number or Y-tunnus ;*
- *The details of the SME's bank account.*

All documents shall be sent to the Contractor in original form by mail to the following address :

*Dijon Métropole, Direction Développement économique et enseignement supérieur
40, Avenue du Drapeau
21000 Dijon, FRANCE*

The Beneficiary is responsible for the exactitude of the data provided to the Contractor.

2.2 Termination

This Agreement may be terminated in accordance with the terms contained herein, without prejudice to the survival of the provisions regarding Background, Intellectual Property and confidentiality, for their respective durations, as well as of those regarding liability, applicable law, settlement of disputes and any other provisions that owing to its purpose should apply beyond the duration of the Agreement shall survive the expiration or termination of this Agreement.

Termination does not affect the Beneficiary's obligation to provide all contributions, deliverables and documents for the period of its participation.

Termination shall take effect on the date indicated in the notice of termination sent by the Contractor to the Beneficiary. Without prejudice to **Article 5**, the Contractor will calculate the final amount of the grant and the balance on the basis of the deliverables submitted, the execution of the tasks and the fulfilment of the other obligations of the Agreement.

ARTICLE 3. OBLIGATIONS OF THE BENEFICIARY

3.1. The Beneficiary undertakes to implement and execute the Project effectively and on time, in accordance with the provisions of this Agreement and its Annexes. If the Beneficiary fails to properly implement the Project (or any part thereof), the Contractor shall be entitled to take action as provided in **Article 5.2.**

The Beneficiary agrees to promptly notify the Contractor of any information, fact, problem or significant delay that may affect the implementation of the Project.

3.2. The Beneficiary must provide promptly all the information reasonably required by the Contractor and/or the Organizer.

3.3. The Beneficiary shall keep for five (5) years after the end of the RESPONSE Project any record, document or other supporting information relating to the execution of the Project, in order to allow verification of the proper implementation of the Project and compliance with its obligations under the Agreement.

3.4. The Beneficiary shall ensure that, in carrying out its tasks and obligations under this Agreement, it fully complies with all applicable laws, rules and regulations, including, but not limited to, safety, security, social security and tax laws, rules and regulations.

3.5. In addition, the Beneficiary shall take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, personal or any other interests liable to influence the impartial and objective performance of the Project. In case the Beneficiary is involved in a conflict of interest or in a risk of conflict of interest, the Beneficiary must formally notify this situation to the Contractor without delay and immediately take all the necessary steps to rectify this situation.

3.6. The Beneficiary is not authorized to act or make legally binding statements on behalf of the Contractor.

3.7. The parties shall meet every 3 months to review the progress of the Project.

ARTICLE 4. LIABILITIES

4.1. The Contractor's contractual liability under this Agreement is limited to the amount of financial support provided to the Beneficiary. In no event shall the Contractor be liable for any indirect or consequential damages such as loss of profits, interest and business opportunities, and any other type of indirect, incidental, special or consequential loss or damage. This limitation of liability does not apply in the case of intentional act or gross negligence.

4.2. No warranty is made, given or implied as to the sufficiency, accuracy or fitness for purpose, or as to the absence of any infringement of third-party proprietary rights regarding any information or material (including Background) provided by the Contractor (and/or any person mandated by the Contractor, including the Organizer) to the Beneficiary. Accordingly, the Beneficiary shall in all cases be wholly and

solely responsible for its use of such information and materials (including Background), and shall not hold the Contractor liable for any infringement of the proprietary rights of any third-party resulting from any right of access to the background.

4.3. The Beneficiary shall bear entirely and exclusively the risks related to the implementation of the Project for which the grant is awarded by the Contractor.

4.4. The Beneficiary is responsible for any act or omission that causes damage to the Contractor and/or the EC in connection with this Agreement.

4.5. Neither the Contractor nor the EC shall be liable for any act or omission of the Beneficiary in connection with this Agreement. In particular, the Beneficiary shall be solely liable for any damage or injury caused to third parties resulting from the performance of its obligations by itself or on its behalf under this Agreement.

ARTICLE 5. BREACH OF CONTRACTUAL OBLIGATIONS

5.1. In the event that the Contractor and/or the Organizer identifies that the Beneficiary:

- has failed to perform its obligations under this Agreement, and in particular, but not limited to, if the Beneficiary:
 - fails to perform its tasks and obligations under **Appendix 1 – The Project** and **Appendix 2 – Guide for applicants** (except in cases of force majeure);
 - fails to perform the Project in an impartial or objective manner due to conflicts of interest;
- has ceased to carry out its activity which is the subject of this Agreement and is therefore unable or unwilling to continue the Project;
- is involved in a bankruptcy, liquidation or receivership process;

The Contractor and/or the Organizer will give written notice requiring such violation to be corrected within 30 days.

If the Beneficiary has not remedied the violation at the end of the 30-day period, the Contractor may unilaterally terminate the Agreement.

5.2. In addition, in case of failure of the Beneficiary, the Contractor reserves the rights:

- to suspend payments;
- to reduce the grant;
- to ask the Beneficiary to reimburse all or part of the payments made.

Events of failure include, but are not limited to, instances in which the Beneficiary:

- Fails its obligations under this Agreement (including improper implementation of the Project);
- breaches confidentiality obligations in Article 7;
- presents or has presented false information;
- has an unresolved conflict of interest.

In the event of a grant reduction, the amount of the reduction will be proportionate to the severity of the violation and the non-performance of the tasks.

ARTICLE 6. FINANCIAL PROVISIONS

6.1. Maximum Financial contribution

The maximum financial contribution to be granted by the Contractor to the Beneficiary shall not exceed the amount of 25 000 euros (Twenty-five thousand euros)

6.2. Terms and Conditions of Financial Support

Funding is based on the Results. The obtaining of funding by the Beneficiary is associated with the complete accomplishment of the relevant Phases as determined in **Appendix 1 – Project Description** and in **Article 6.3**.

Payment of individual installments of the grant (as determined in **Article 6.3**) to the Beneficiary is therefore conditioned upon a favorable resolution by the Contractor, based on the progress and Results of the Project at the end of each Phase.

The Contractor shall monitor the proper execution of the Project to ensure that the Beneficiary fulfills its tasks in accordance with **Appendix 1 - Project Description**, and submits the corresponding deliverables. To this end, the Beneficiary shall submit to the Contractor, upon request, any document, report and/or information to justify the proper execution of the Phase of the Project by the Beneficiary. In accordance with **Article 5**, the Contractor may suspend and/or reduce the amount of the different grant payments if the corresponding tasks of the Phase have not been properly carried out.

The payment of the financial contribution to the Beneficiary is also subject to the Beneficiary's prior written notification of the date and amount to be transferred to the Beneficiary's bank account as identified in **Appendix 3**.

Payments shall be made no later than sixty (60) days after notification by the Contractor.

If applicable, bank and transaction costs related to the processing of funds made available to the Beneficiary by the Contractor are covered by the Beneficiary.

The Beneficiary is responsible for compliance with any tax and legal obligations that may be attached to the grant.

The Beneficiary acknowledges that the “no double funding” rule applies to the awarded grant. “Double funding” means the situation where the same costs for the same activity are funded twice through the use of public funds. It is a fundamental principle underpinning the rules for public expenditure in the EU that no costs for the same activity can be funded twice from the EU budget. It is not allowed in any circumstances. The Beneficiary undertakes to follow this rule. The Beneficiary may not use the grant awarded by the Contractor to cover activities other than those related to the Project.

6.3. Payment Schedule

Payments will be made in three installments: a pre-financing payment of 10 000€, an intermediary payment of max 10 000 euros and a final payment of 5 000€, based on the completion of the Project, with the means of justification being the completion of the tasks and deliverable(s) associated as defined in **Appendix 1 – The Project**.

PHASES	CONDITIONS/TERMS	ESTIMATED DATE OF PAYMENT	AMOUNT TO BE PAID (individual grant installments)
Phase 1	Advance payment after signing the Sub-Grant Agreement	At the start of the Project	40% (up to 10,000 euros)
Phase 2	At the delivery of the prototype	Month 4 after the start of the Project, after favorable resolution by the Contractor	40% (up to 10,000 euros)
Final phase	At the end of the experimentation after the final meeting	Month 8 after the start of the Project, after favorable resolution by the Contractor	20% (up to 5,000 euros)

The Beneficiary shall be entitled to receive the payments allocated to each specific phase of the Project only if the conditions of **Article 6.2** are met.

6.4. Use of the financial contribution and recovery

The Beneficiary undertakes to make appropriate use of the funding for the purpose of carrying out the Project in accordance with the description in **Appendix 1 - The Project**.

If, due to misuse of funds received, the EC seeks to recover from the Contractor any financial contribution paid to the Beneficiary under this Agreement, the Beneficiary undertakes to repay such amounts to the Contractor within the time limits specified by the Contractor. In addition, the Beneficiary shall indemnify the Contractor against any losses, liabilities, costs, charges, claims or damages resulting from or arising out of any such recovery action by the European Commission.

ARTICLE 7. CONFIDENTIALITY

7.1. Confidential information (hereinafter "Confidential Information") means any information, of any nature or form whatsoever, relating to any knowledge whatsoever, communicated by one Party (and/or the Organizer) to the other Party (and/or the Organizer) in the performance of the Agreement and identified as confidential at the time of its disclosure. In the case of information communicated as confidential only orally or visually by one Party (and/or the Organizer) to the other Party (and/or the Organizer), it shall be notified in writing as confidential within thirty (30) days of its communication to be considered as such.

The data included in **Appendix 4 - Background** made available to the Beneficiary is considered Confidential Information.

7.2. Each Party agrees to treat as confidential the Confidential Information communicated by the other Party (and/or by the Organizer, when the receiving party is the Beneficiary), and :

- i) Not to disclose it to third parties without the prior written consent of the Party (or the Organizer, as the case may be) who disclosed them;
- ii) To take all appropriate measures to avoid disclosure, it being understood that the Contractor may at any time request information on such measures and compliance therewith;
- iii) Not to use the Confidential Information for any purpose other than the performance of the Agreement.

This commitment is valid for the duration of the Agreement and for a period of five (5) years from the date of expiration or termination of the RESPONSE Project (i.e. until September 30, 2030).

7.3. - Without prejudice to the possibility for the Contractor to transmit the Confidential Information of the Beneficiary to the Organizer - The Receiving Party shall limit access to Confidential Information obtained from the Disclosing Party to its employees only and shall take all necessary measures, in particular contractual measures, to ensure that its employees respect the confidentiality of the information of which they may have knowledge in the performance of the Agreement.

7.4. Each party shall immediately inform the other of anything that may suggest a breach of confidentiality obligations.

7.5. The Contractor agrees to take all measures, including contractual measures, to ensure that the Organizer is bound by the same confidentiality obligations as contained in this Article 7. In the event of any breach by the Organizer of the confidentiality obligations, the Contractor shall be held liable.

7.6. The confidentiality undertakings in **Article 7** do not extend to information that the receiving Party (or the Organizer, as the case may be) can prove:

- was, at the time of disclosure to receiving Party (or the Organizer, as the case may be), published or otherwise generally available to the public, or
- has, after its disclosure to the receiving Party (or the Organizer, as the case may be), been published or become generally available to the public otherwise than through any act or omission on the part of the receiving Party (or the Organizer), or
- was already in the possession of the receiving Party (or the Organizer, as the case may be), without any restrictions on disclosure, at the time of disclosure, or
- was rightfully acquired from others without any undertaking of confidentiality, or
- is subsequently independently developed by the receiving Party (or the Organizer, as the case may be) without use of the information provided by the disclosing Party (and/or the Organizer).

ARTICLE 8. INTELLECTUAL PROPERTY

8.1. Results

- 8.1.1. The Results of the Project are the exclusive property of the Beneficiary.
- 8.1.2. The Beneficiary grants a license to use the Results of the Project to the Contractor for the purposes of their implementation on the territory of the City of Dijon, for the needs of the implementation of the Project. This license will be granted free of charge for a period of twelve (12) months, it is non-transferable and without any right of sub-license, unless otherwise agreed by the Beneficiary. After the expiry of the Agreement, the City of Dijon may request, if it so wishes, a license to use the Results of the Project under normal commercial conditions, for the duration requested by it and for the purposes of implementing the Project Results on its territory.
- 8.1.3. The Beneficiary shall ensure that the Project Results do not infringe any third-party rights, such as patents, trademarks, or copyrights. The Contractor and the Organizer are not liable for any infringement by the Beneficiary.
- 8.1.4. The Beneficiary agrees to keep the Project Results confidential and not disclose them to any third party without the prior written consent of the Contractor or Organizer.
- 8.1.5. The Beneficiary is responsible for protecting their intellectual property rights, including any patents or trademarks that arise from the Project Results.

- 8.1.6. The Contractor and the Organizer are not obligated to use any of the Project Results generated during The Project or enter into any agreement with the Beneficiary.
- 8.1.7. The Contractor and the Organizer agree to attribute the Beneficiary by name when using the Project Results.

ARTICLE 9. FORCE MAJEURE

“Force Majeure” shall mean any unforeseeable exceptional situation or event beyond the Parties’ control, which prevents either of them from fulfilling any of their obligations under the Agreement, which was not attributable to error or negligence on their part, and which proves to be inevitable in spite of exercising all due diligence.

Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labor disputes, strikes or financial difficulties cannot be invoked as force majeure.

The Parties shall take the necessary measures to limit any damage due to force majeure. They shall do their best to resume the implementation of the Project as soon as possible.

No Party shall be considered to be in breach of its obligations and tasks if such breach is caused by force majeure.

A Party will notify the other Party of any force majeure as soon as possible. In case the Beneficiary is not able to overcome the consequences of Force Majeure within thirty (30) calendar days after such notification, the Contractor will decide accordingly including the termination of the Agreement.

ARTICLE 10. DATA PROTECTION OBLIGATIONS

The Parties have the obligation to abide by the Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

The processing of personal data shall be carried out lawfully, fairly and in a transparent manner, collected for specified purposes and adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.

ARTICLE 11. INFORMATION AND COMMUNICATION TOWARDS THE EC

The Beneficiary shall, throughout the duration of the Project, take appropriate measures to engage with the public and the media about the project and to highlight the financial support of the EC. Unless the EC requests otherwise, any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc.), must specify that the project has received research funding from the EC and display the European emblem.

In particular, the Beneficiary must include the following text: For communication activities: *“This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 957751”*. For infrastructure, equipment, and major results: *“This [infrastructure] [equipment] [insert type of result] is part of a project that has received funding from the European Union’s Horizon 2020*

research and innovation programme under grant agreement No 957751”.

When displayed in association with a logo, the European emblem should be given appropriate prominence. This obligation to use the European emblem in respect of projects to which the EC contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the emblem or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, the Beneficiary is exempted from the obligation to obtain prior permission from the EC to use the emblem.

Any publicity made by the Beneficiary in respect of the project, in whatever form and on or by whatever medium, must specify that it reflects only the author’s views, and that the EC is not liable for any use that may be made of the information contained therein.

The EC may use, for its communication and publicising activities, information relating to the Project, documents notably summaries for publication and public deliverables as well as any other material, such as pictures or audio-visual material received from any beneficiary (including in electronic form). The right to use a beneficiary’s materials, documents and information includes:

- (a) use for its own purposes (in particular, making them available to persons working for the EC or any other EU institution, body, office or agency or body or institutions in EU Member States; and copying or reproducing them in whole or in part, in unlimited numbers);
- (b) distribution to the public (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);
- (c) editing or redrafting for communication and publicising activities (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation);
- (d) translation;
- (e) giving access in response to individual requests under Regulation No 1049/200127, without the right to reproduce or exploit;
- (f) storage in paper, electronic or other form;
- (g) archiving, in line with applicable document-management rules, and
- (h) the right to authorise third parties to act on its behalf or sub-license the modes of use set out in Points (b), (c), (d) and (f) to third parties if needed for the communication and publicising activities of the EC.

The Beneficiary shall ensure that all necessary authorizations for such publication have been obtained and that the publication of the information by the EC does not infringe any rights of third parties (including personnel of the Beneficiary).

Upon a duly substantiated request by the Contractor on behalf of the Beneficiary, the EC may agree to forego such publicity if disclosure of the information indicated above would risk compromising the Beneficiary’s security, academic or commercial interests.

ARTICLE 12. FINANCIAL AUDITS AND CONTROLS

The EC may, at any time during the implementation of the Project and up to five years after the end of the

RESPONSE Project (i.e. until September 30, 2030), arrange for financial audits to be carried out, by external auditors, or by the EC services themselves including the European Anti-Fraud office (OLAF), on the Beneficiary. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the EC. Such audits may cover financial, systemic, and other aspects (such as accounting and management principles) relating to the proper execution of the Grant Agreement. They shall be carried out on a confidential basis.

The Beneficiary shall make available directly to the EC all detailed information and data that may be requested by the EC or any representative authorized by it, with a view to verifying that the Grant Agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it. This information and data must be precise, complete, and effective.

The Beneficiary shall keep the originals or, in exceptional cases, duly authenticated copies – including electronic copies - of all documents relating to the Agreement until 5 years after the end of the RESPONSE Project. These shall be made available to the EC where requested during any audit under the Grant Agreement.

In order to carry out these audits, the Beneficiary shall ensure that the EC's services and any external body(ies) authorized by it have on-the-spot access at all reasonable times, notably to the Beneficiary's offices, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the project. They shall ensure that the information is readily available on the spot at the moment of the audit and, if so requested, that data be handed over in an appropriate form.

On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent by the EC or its authorised representative to the beneficiary concerned, which may make observations thereon within one month of receiving it. The EC may decide not to take into account observations conveyed or documents sent after that deadline. The final report shall be sent to the beneficiary concerned within two months of expiry of the aforesaid deadline.

On the basis of the conclusions of the audit, the EC shall take all appropriate measures which it considers necessary, including the issuing of recovery orders regarding all or part of the payments made by it and the application of any applicable sanction.

The European Court of Auditors shall have the same rights as the EC, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.

In addition, the EC may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the EC in order to protect the European Communities' financial interests against fraud and other irregularities.

ARTICLE 13. MISCELLANEOUS PROVISIONS

13.1 Amendments

Amendments or changes to this Agreement shall be made in writing and signed by the duly authorized representative of the Parties.

Nevertheless, In the event the EC modifies the conditions, the Contractor will amend the Agreement accordingly.

13.2 Notification

Any notice to be given under this Agreement shall be in writing to the following addresses and addressees:

- For the Contractor: []
- For the Beneficiary: []

Any change of person or contact information shall be notified immediately to the other Party.

13.3 Assignment and subcontracting

The Beneficiary shall not assign or transfer in whole or in part any of its rights or obligations under this Agreement without the Contractor express prior written consent.

If subcontracting is authorized for the implementation of the Project, the Beneficiary shall be responsible for holding the subcontractor to the confidentiality obligations set forth in Section 9, and shall be liable for any breach of those obligations by the subcontractor.

13.4 Language

This Agreement is drawn in English, language which shall govern all documents, notices, meetings and processes relative thereto.

ARTICLE 14. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

This Agreement shall be construed in accordance with and governed by the laws of France.

In case of dispute over the interpretation or performance of the Contract, the Parties undertake to meet and deploy all resources to resolve the dispute amicably.

The first Party to act shall approach the other party by registered letter with advice of receipt with the aim of attempting to reach an amicable settlement.

Failing amicable settlement within a (1) month of receipt by the other Party of the letter of referral, the Party first taking action may refer the matter to the Court of Dijon.

AS WITNESS:

The Parties have caused this Agreement to be duly signed by the undersigned authorized representatives in two (2) copies the day and year first above written:

For **DIJON METROPOLE**

Mr/Ms [NAME SURNAME]
[POSITION IN ORGANISATION]

Signature

Done at [Place] on [Date]

For [ORGANISATION NAME]

Mr/Ms [NAME SURNAME]
[POSITION IN ORGANISATION]

Signature

Done at [Place] on [Date]

Appendix 1: The Project

[Applicant's Project. Description of the Project, tasks, deliverables, etc.]

Appendix 2: Guide for applicants

[Insert link to guide]

Appendix 3: Financial information of the Beneficiary

[Bank account]

Appendix 4: Background (if applicable)

[Dijon's Background, as well as possible conditions/restrictions to access rights for the implementation of the Project and/or the exploitation of the Results]



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