

## **GENERAL TERMS AND CONDITIONS AND ASSESSMENT CRITERIA BRAINPORT EINDHOVEN REGION DEAL PROJECTS**

### **1. DEFINITIONS**

#### **1.1. Stichting Brainport.**

Stichting Brainport is a close partnership of companies, knowledge institutions, and governments in Brainport Eindhoven. Stichting Brainport is responsible for the implementation of the Brainport Eindhoven Region Deal.

#### **1.2. Regiofond's Brainport BV.**

Regiofond's Brainport BV manages the funds provided by the government in the context of the Brainport Eindhoven Region Deal.

#### **1.3. Government-Region Steering Committee.**

The Government-Region Steering Committee is the coordinating body between the government and the region for the implementation of the National Brainport Action Agenda and the Brainport Eindhoven Region Deal.

#### **1.4. Brainport Eindhoven Proposition.**

The Brainport Eindhoven Proposition for the region envelope of 8 January 2018 (hereinafter: Brainport Eindhoven Proposition) indicates the challenges to consolidating and expanding the international competitive position of Brainport Eindhoven. The Brainport Eindhoven Proposition also describes the projects that provide an answer to these challenges as they contribute to developing and realising a distinctive range of facilities, attracting and maintaining talent (at all levels of education), and innovations with a social impact.

#### **1.5. Brainport Eindhoven Region Deal.**

The Brainport Eindhoven Region Deal sets out the framework within which the parties endeavour to use the 130 million euros reserved by the government for Brainport Eindhoven.

#### **1.6. Financial contribution decision.**

The financial contribution decision indicates whether or not the applicant will receive a contribution within the framework of the Brainport Eindhoven Region Deal and the associated conditions/requirements.

### **2. FORMAL REQUIREMENTS**

2.1. The application in the context of the Brainport Eindhoven Region Deal must be submitted to Regiofond's Brainport BV.

2.2. The application will be submitted using the Project Application Brainport Eindhoven Region Deal format.

2.3. A completed and duly signed application which makes clear how the project will be implemented, budgeted, and funded.

2.4. The annexes set out in the Brainport Eindhoven Region Deal application must be enclosed.

- 2.5. The signed co-funding statement(s) of the (co-)financiers of the project to which the application relates must be available, duly signed, and enclosed.
- 2.6. The latest final financial statements of the company must be submitted with the project application as an annex.

### 3. MISCELLANEOUS

- 3.1. The financial contribution in the context of the Brainport Eindhoven Region Deal will only be provided to a legal entity.
- 3.2. The financial contribution is capped and includes VAT which may not be eligible for settlement or compensation. The applicant is responsible for the payment, settlement, or compensation of VAT.
- 3.3. There is no case of unauthorised state aid.
- 3.4. The project is included in one of the programme themes of the Brainport Eindhoven Proposition (internationally distinctive facilities, attracting international knowledge staff and students, innovations with a social impact). The Brainport Eindhoven Proposition has been enclosed as an annex to the general terms and conditions and the Brainport Eindhoven Proposition assessment criteria.
- 3.5. Stichting Brainport reserves the right to make amendment proposals concerning the project portfolio. These amendment proposals will be assessed by the Government-Region Steering Committee.
- 3.6. The projects will be assessed based on the following criteria:
  - The degree to which the project contributes to the objectives of the Brainport Eindhoven Region Deal as set out in the Brainport Eindhoven Region Deal agreed between the government and the region on 6 July 2018;
  - The quality of the business case:
    - Content perspective (what, why, for whom, how, result);
    - Organisational perspective (governance, activities schedule);
    - Financial perspective (budget and funding of activities, degree of co-financing);
    - Continuity - content, financial, and organisational (safeguarding results and estimate, coverage and substantiation of structural operational expenses after project implementation in the context of the Brainport Eindhoven Region Deal).
- 3.7. The feasibility of the project within a determined period, which means that the starting date and end date must be able to be interpreted unambiguously.
- 3.8. Projects must start within 6 months after the financial contribution decision has been provided. If the implementation of the project does not start within 6 months, the reservation of funds will expire and a new application must be submitted.  
The Board of Regiofondsen Brainport BV may deviate from the above condition in extraordinary circumstances.
- 3.9. Regiofondsen Brainport BV will forward any applications in the context of the Brainport Eindhoven Region Deal to an independent advisory committee established for this purpose. The Board of Stichting Brainport will decide whether or not to award the contribution in the context of the Brainport Eindhoven Region Deal based on the advice of the committee.

- 3.10. The decision of Stichting Brainport will be communicated within 14 days of the decision of Stichting Brainport by means of the financial contribution decision.
- 3.11. The financial contribution decision will be communicated to the applicant as soon as possible.
- 3.12. The financial contribution decision will at least contain the following details:
  - applicant name;
  - decision on the financial contribution application;
  - conditions/requirements for accepting the application, if awarded.
- 3.13. The financial contribution decision will be signed by or on behalf of the Board of Regiofond Brainport BV.
- 3.14. The co-financing of the project must take place based on the Investment-Government-Region relationship as indicated by Stichting Brainport.
- 3.15. As a rule, the applicant will be responsible for any pre-financing of the project. In extraordinary circumstances in which the applicant is unable to provide the pre-financing, Regiofond Brainport BV may decide to finance part of the costs.
- 3.16. Project applications must have been submitted no later than 1 September 2021.
- 3.17. Projects must be completed no later than 31 December 2025.

#### 4. REPORTING

- 4.1. The project applicant must report on the substantive progress of the project to Regiofond Brainport BV at least once per year (no later than February 1st).
- 4.2. The report must be submitted using the Project Monitoring Brainport Eindhoven Region Deal format.
- 4.3. You must provide the (public version of the) recent annual accounts to Regiofond Brainport BV before July 1st.

#### 5. PAYMENTS

- 5.1. The manner in which the contribution of Brainport Eindhoven Region Deal will be paid will be set out in the financial contribution decision.
- 5.2. Regiofond Brainport BV will make payments up to 80% of the requested payment based on the project completion status and the payment request submitted by the applicant/authorised signatory.
- 5.3. The remaining amount (20%) will be paid based on the technical and financial final report and the final assessment of the entire project (refer to Article 6.1 to 6.4).
- 5.4. By way of deviation from the provisions of Article 5.2 to 5.3, Regiofond Brainport BV may, at the request of the project applicant, pay 100% of the requested amount, provided that the applicant annually after the end of each financial year provides an auditor statement in accordance with the 'auditor statement' protocol based on the project completion status and the payment requests submitted by the applicant/authorised signatory. The final assessment of the financing granted in this manner will take place after completion of the

overall project (in accordance with the end date set out in the project application) based on the technical and financial final report (refer to Article 6.1 to 6.4).

- 5.5. Claims for the preceding period can be submitted four times a year, in accordance with the following time scheme: 1 January to 15 February, 1 April to 15 May, 1 July to 15 August, and 1 October to 15 November. If the assessment is positive, a decision will be made on the payment within an average of 6 to 8 weeks after submission of the claim.
- 5.6. The applicant will receive a decision on the payment within no more than 8 weeks after submission of the claim.
- 5.7. Payment also depends on the advance paid by the government to Regiofond's Brainport BV. If the government decides to (temporarily) suspend its contribution, this may affect the payment of the contribution to your project and the corresponding financing.
- 5.8. If the annual accounts (or other circumstances) indicate that the continuity of your organisation is not guaranteed or there are substantial grounds to doubt the viability of the organisation, this may affect the continued payment of contributions. Regiofond's Brainport BV may decide to suspend and/or terminate the payments if this is the case.

## 6. ASSESSMENT

- 6.1. The applicant must submit a final assessment request to Regiofond's Brainport BV using the format for the technical and financial final report no later than 3 months after the completion of the project (in accordance with the end date in the project application).
- 6.2. The applicant must submit the final assessment request with a technical and financial final report.
- 6.3. When submitting the assessment request, the applicant/authorised signatory must demonstrate that:
  - the activities for which the contribution in the context of the Brainport Eindhoven Region Deal has been provided, have been carried out;
  - the obligations imposed on the contribution have been met.
- 6.4. Projects that receive a contribution in the context of the Brainport Eindhoven Region Deal must submit a(n) (positive) audit statement by an independent auditor for the final assessment of the contribution with respect to the out-of pocket costs and co-financing in cash. For the in-kind contribution a Board statement which declares that the provided contributions have been used to realise the project in question is sufficient. The above must take place in accordance with the auditor statement protocol drawn up by Regiofond's Brainport BV.

In case of partial-applications, the (positive) audit statement and Board statement must be drawn up for the entire project.
- 6.5. The final overall contribution in the context of the Brainport Eindhoven Region Deal will never exceed the original reserved amount. The contribution will be reduced pro rata if the costs are lower.

## 7. GROUNDS FOR REFUSAL

The contribution in the context of the Brainport Eindhoven Region Deal can be refused, if:

- 7.1. accepting the application would be in violation of mandatory statutory provisions, such as but not limited to the provisions of European state aid legislation;
- 7.2. there is a valid reason to assume that the funds will not, or insufficiently, be used for the purpose for which the contribution was requested;
- 7.3. there is a valid reason to assume that the continuity of the activities of the applicant is insufficiently safeguarded (last annual report and audit statement must be enclosed);
- 7.4. the application in the context of the Brainport Eindhoven Region Deal is not in line with the framework of the Brainport Eindhoven Proposition on other grounds;
- 7.5. the application does not comply with these general terms and conditions.

## 8. CO-FINANCING CONDITIONS

- 8.1. The co-financing of the application may consist of existing, already invested and/or committed funds.
- 8.2. The co-financing of the project must take place based on the Investment-State-Region relationship as indicated by Stichting Brainport (which serves as a minimum requirement for co-financing; a greater ratio is possible).
- 8.3. There must be sufficient assurance during the project that the overall state-region ratio will be achieved in the end.
- 8.4. The co-financing must relate directly to the project for which the state contribution is awarded.
- 8.5. The co-financing must consist of expenses that have been actually incurred and paid.
- 8.6. The state contribution and co-financing ratio must be substantiated during both the preparatory phases (by means of a signed commitment) and after the completion the incurred expenses).
- 8.7. The co-financing may be forwarded to the (sub-)project applicant as a condition (e.g. in case of framework projects/tenders).
- 8.8. In case of the co-financing conditions are forwarded to the ultimate project purchaser (in case of framework projects/tenders), this will be sufficient substantiation for the project-determination and project-preparation phases because of the nature of these projects.
- 8.9. The co-financing can consist of both in kind and in cash contributions.
- 8.10. If case of an in kind contribution, a time sheet with formal approval of an authorised signatory is sufficient substantiation.
- 8.11. The co-financing does not need to be provided by the project applicant itself, but may also be provided by third parties.
- 8.12. The co-financing must be within reasonable standards, which means that it must be in line with market rates.
- 8.13. Cost price x 1.25 will be used as a guideline for financing in kind.  
Regiofonds Brainport BV may approve certain costs components as attributable costs if insight has been provided into the cost structure if the actual overhead remains below the range of 25% after deduction of identifiable attributable costs. Regiofonds Brainport BV

- offers the possibility of using a cost calculation method which has been approved as part of an European or Ministerial grant scheme, such at the discretion of Regiofond's Brainport BV.
- 8.14. Projects will be concluded with a positive auditor statement for cash contributions and a Board statement for in kind contributions. It must be plausible to the auditor that the co-financing contribution is actually made.
  - 8.15. If no co-financing accountability has been given, Regiofond's Brainport BV has the right to revoke (recover) the entire financial contribution awarded as part of the Brainport Eindhoven Region Deal.
  - 8.16. Regiofond's Brainport BV has the power to decide whether or not something may be reasonably accepted as co-financing for the project in question.

## **CONCLUSION**

Regiofond's Brainport BV may amend the general terms and conditions based on decisions made by Stichting Brainport and after consultation with the project applicants who already receive funding, or if a change in the laws of the Netherlands, European legislation, or changes by the government that affect the Region Deal requires this adjustment with immediate effect. The general terms and conditions of Regiofond's Brainport BV are adopted by Stichting Brainport.

In specific cases not arranged for in these general terms and conditions, Regiofond's Brainport BV and the applicant will consult in good faith and strive to find a solution which is acceptable to both parties. If the parties fail to reach an agreement, each of them will appoint one advisor, after which these advisers will jointly appoint a third advisor who will act as chairman. The advisers will be instructed to take a decision which will be binding on both parties, in which context the opinion of the chairman will be decisive if the advisers appointed by the parties fail to come to a shared decision by majority vote.

These General Terms and Conditions are governed by the laws of the Netherlands.

In case of any conflict between the original Dutch version of these General Terms and Conditions and any translation in any other language, the original Dutch version will prevail.