



PL-BY-UA  
2014-2020

## GRANT CONTRACT

Grant Contract no .....

on implementation of the Project **[Project title]** .....

In accordance with the decision of the Joint Monitoring Committee of [yyyy.mm.dd]  
.....

Within the Cross-Border Cooperation Programme Poland-Belarus-Ukraine 2014-2020 under  
the European Neighbourhood Instrument

**MINISTER OF ECONOMIC DEVELOPMENT AND FINANCE** of the Republic of Poland,

Pl. Trzech Krzyży 3/5

00-507 Warsaw, Poland,

acting as the Managing Authority for the European Neighbourhood Instrument (ENI) Cross-  
Border Cooperation Programme Poland-Belarus-Ukraine 2014-2020 (hereinafter the  
"Programme"),

represented by **[full name and function of a person representing the Managing  
Authority]**.....,

based on the authorization no. .... as of ..... (Annex I to this Contract)

of one part,

and

[Full official name of the Lead Beneficiary]

[Legal status (organisation)]

[Organisation official registration number]

[Full official address]

[VAT number, for VAT registered Beneficiaries],

("the Lead Beneficiary"),

represented by **[full name and position of person representing the Lead  
Beneficiary]**.....,

based on the authorization no. .... as of ..... (Legal Entities Form, Annex II to this  
Contract)

of the other part,

hereinafter referred to jointly as „Parties”,

have agreed as follows:

## § 1

### DEFINITIONS

For the purposes of this Contract the terms listed below shall have the following meaning:

1. **Applicant's financial contribution** – Lead Beneficiary's and Beneficiaries co-financing own contribution in the total costs in the Project, as provided for in the Application Form;
2. **Beneficiary** – an entity indicated in the Description of the Project, who participates in the Project under the conditions of this contract and who is bound to the Lead Beneficiary by means of a Partnership agreement concerning a Project implementation;
3. **co-financing rate** – a quotient of the value of EU funding allocated for the whole Project and the total values of eligible expenditures of the Project (defined in the Description of the Project and the Project Budget) expressed in percentages accurate to the second decimal place. Co-financing rate may not exceed 90,00% of eligible expenditures for the Lead Beneficiary and each Beneficiary;
4. **EU co-financing** – funds originating from EU (European Regional Development Fund, ERDF and European Neighbourhood Instrument, ENI) allocated to the Project;
5. **eligible expenditure** – expenditure or costs duly incurred by the Lead Beneficiary or Beneficiaries, in reference to implementation of the Project under the Programme, pursuant to the eligibility requirements defined in this Contract, the applicable provisions of EU regulations, Financing Agreements signed between EU and Belarus and Ukraine and national regulations of the Beneficiary and the additional instructions and clarifications provided in the version in force of the Programme Manual;
6. **financial correction** – an amount by which the co-financing for the Project is decreased due to an individual or systemic irregularities detected in the Project.;
7. **indirect costs** – costs which are necessary for the Project implementation, but which may not be identified as specific costs directly linked to the implementation of the Project and may not be booked to it directly according to the conditions of eligibility, in line with article 51 of the Commission Implementing Regulation no. 897/2014 of 18 August 2014;
8. **ineligible expenditure** – each and every expense or cost which does not comply with the requirements set in the grant contract and related documents;
9. **irregularities** – any infringement of the Grant Contract or of applicable law resulting from an act or omission by Beneficiary involved in the implementation of the Project, which has, or would have, the effect prejudicing the budget of the Union by charging an unjustified item of expenditure in the interim/final progress reports;
10. **Joint Monitoring Committee** – the joint committee responsible for monitoring the implementation of the Programme;
11. **Joint Technical Secretariat** - the body set up by the participating countries to assist the Programme bodies;
12. **Lead Beneficiary** – an entity indicated in the Description of the Project, who has signed the Grant Contract and who is responsible for the financial and substantial implementation of the Project;
13. **Lead Beneficiary's account** – the bank account to which the EU co-financing is transferred, indicated in the Annex V to the Contract;
14. **Managing Authority** – the authority or body appointed by the participating countries as responsible for managing the Programme;
15. **Guidelines on expenditure verification** – a document adopted by the Joint Monitoring Committee providing the principles of auditor's responsibilities, the type and scope of the verification;

16. **Partnership agreement** – an agreement concluded between the Lead Beneficiary and Beneficiary (or Beneficiaries), defining joint rights and obligations concerning the Project implementation together with checks and controls after Project's closure;
17. **Programme documents** – documents approved by the Joint Monitoring Committee, which are applicable to the Programme implementation;
18. **Programme Manual** – a document adopted by the Joint Monitoring Committee providing the principles of the Project preparation, implementation, monitoring, financial management, payments and durability. The Lead Beneficiary shall have access to the current version of the Programme Manual and shall be informed immediately via the Programme website [www.pbu2020.eu](http://www.pbu2020.eu) about any amendments to the document;
19. **Programme website** – [www.pbu2020.eu](http://www.pbu2020.eu);
20. **project** – series of activities defined and managed in relation to the objectives, outputs, results and impacts which it aims at achieving within a defined time-period and budget, as defined in the Description of the Project, implemented under the Programme based on a Contract;
21. **staff costs** – the costs of staff employed by the Beneficiaries directly engaged in the Project implementation, settled within the budget line: Staff costs;

## § 2

### PURPOSE OF THE CONTRACT

1. The purpose of this Contract is the award of the grant by the Managing Authority for the implementation of the Project in accordance with the Description of Project (Annex III) and Project Budget (Annex IV). In particular, the Contract specifies the Parties' rights and obligations referring to the implementation of the Project.
2. The Lead Beneficiary will be awarded the grant on the terms and conditions set out in this Contract, which consists of these provisions and annexes, which the Lead Beneficiary hereby declares it has noted and accepted.
3. The Lead Beneficiary accepts the grant and undertakes to carry out the Project under its own responsibility.
4. During the Project implementation and period of durability as referred in the Programme Manual, the Lead Beneficiary shall act in accordance with:
  - 1) the EU law and national regulations binding the Lead Beneficiary, in particular:
    - a. Regulation (EU) no. 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (ENI);
    - b. Regulation (EU) no. 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action;
    - c. Commission Implementing Regulation (EU) no. 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) no. 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument (hereinafter IR);
    - d. Regulation (EU, Euratom) no. 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union repealing Council Regulation (EC, Euratom) no. 1605/2002;
    - e. Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the

European Parliament and of the Council on the financial rules applicable to the general budget of the Union;

- f. Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (hereinafter Regulation 2988/95)
  - g. national regulations concerning personal data protection;
  - h. relevant national and EU legislation on public procurement and state aid;
  - i. other applicable national legislation, such as labour, tax, environment etc.;
- 2) current versions of the Programme documents, in particular:
- a. Joint Operational Programme for the ENI Cross-border Cooperation Programme Poland-Belarus-Ukraine 2014-2020;
  - b. Programme Manual part I and II;
  - c. Guidelines on expenditure verification;
- 3) international agreements, in particular:
- a. Framework Agreement between the Commission of the European Communities and the Government of the Republic of Belarus signed on 18 December 2008;
  - b. Framework Agreement between the Government of Ukraine and the Commission of the European Communities signed on 12 December 2006;
- 4) relevant national regulations.
5. The Lead Beneficiary hereby declares it has noted and accepted the aforementioned documents and acknowledges the way of presenting the amendments of these documents.
6. The Lead Beneficiary confirms the veracity of the data indicated in the Contract, including the Annexes, which constitute its integral part.
7. The Lead Beneficiary shall ensure that all Beneficiaries are obliged to abide by the binding provisions of the EU and their national law, current Programme documents and the relevant national regulations aforementioned in point 3.

### **§ 3**

#### **PARTNERSHIP AGREEMENT**

1. The Lead Beneficiary shall regulate the mutual cooperation rules with the Beneficiaries, in particular specifying the tasks and obligations arising from the Project implementation in the Partnership agreement as well as the obligations after Project's closure.
2. The Lead Beneficiary shall submit the Partnership agreement signed by all Beneficiaries to the Joint Technical Secretariat not later than 60 days after conclusion of this Contract. The payments from the Managing Authority to the Project (the Lead Beneficiary's Account) will be made only after the submission of the relevant Partnership agreement.
3. The Partnership agreement includes the provisions consistent with the *Minimal scope of the Partnership agreement* drawn up by the Managing Authority and made available to the Lead Beneficiary on the Programme website. The Partnership agreement shall include *inter alia* a clear division of tasks and responsibilities concerning the implementation of the Project and provisions guaranteeing sound financial management of the funds allocated to the Project, including arrangements for recovering amounts unduly paid. The Partnership agreement may include additional provisions agreed between the Lead Beneficiary and the Beneficiaries in order to implement the Project.

## § 4

### IMPLEMENTATION PERIOD OF THE PROJECT

1. This Contract shall enter into force on the date when the last of the two Parties signs. The Lead Beneficiary shall sign the Contract within 30 days from the date of its receipt from the Managing Authority.
2. Implementation of the Project shall begin on:
  - [the day following that on which the last of the two Parties signs]
  - [the first day of the month following the date on which the first instalment of pre-financing is paid by the MA]
  - a later date: [dd.mm.yyyy].....
3. The Project's implementation period, as laid down in Annex III, has a duration of [number of months] ... months since its start date presented above. All Projects activities need to be carried out during the implementation period, with the exceptions linked to the preparation of the final progress report including expenditure verification, audit and final evaluation as stipulated in §15 and 16 and the Programme Manual.
4. The execution period of this Contract will end at the moment when final payment is made by the Managing Authority and in any case at the latest 18 months as from the end of the implementation period as stipulated in § 4.3 above. The provisions concerning the execution period in no way affect the durability and recovery provisions stipulated in the Grant Contract.

## § 5

### FINANCING OF THE PROJECT

1. The total eligible cost of the Project is estimated at .....EUR (in words: ..... EUR ), as set out in Annex IV.
2. The Managing Authority undertakes to finance a maximum of .....EUR (in words: ..... EUR), equivalent to ... % (*maximum 90%*) of the estimated total eligible expenditures within the Project.
3. Pursuant to the Programme Manual, <...>% [*maximum 7%*] of the final amount of direct eligible costs of the Project established in accordance with § 6 and § 15, excluding costs incurred in relation to the provision of infrastructure, may be claimed as indirect costs.
4. [OPTIONAL: Preparation of strong Partnership costs in the lump sum of 5000 EUR of total eligible costs are claimed within the Project. The efficiency of the lump sum will be measured by an indicator, i.e. Full Application Form submission].
5. Staff costs in the Project are settled:
  - [on the basis of a lump sum of up to 50 000 EUR of eligible costs per Project. The efficiency of the lump sum will be measured by an indicator, i.e. interim/final progress report submissions and the lump sum may not be fully paid by the Managing Authority shall the interim/final progress reports not be presented in a timely manner.

or

  - on the basis of actual costs.

(CHOOSE ONE).]
6. The Lead Beneficiary and Beneficiaries ensure financial contribution which accounts for minimum 10% of the equivalent estimated total eligible cost of the Project, specified in section 1 above. The final amount shall be established in accordance with § 6 and § 15.

7. In addition, the Lead Beneficiary and Beneficiaries are responsible for covering all the costs that make a balance between all incurred costs and EU co-financing actually paid by the Managing Authority. In that respect, the Lead Beneficiary and Beneficiaries must be aware that ineligible costs will not be treated as required minimum of 10% of co-financing.

## **§ 6**

### **OBJECT OF USE, ELIGIBILITY OF COSTS**

1. The grant is awarded exclusively for the Project as approved by the JMC and described in Annex III and Annex IV.
2. Costs financed pursuant to § 5 of this Contract shall consist exclusively of eligible costs as listed in Annex IV. The general eligibility of costs for ENI financing is regulated in the articles 48-51 of the IR. Further specific requirements which need to be met in order to consider the expenditures eligible are provided in the current version of the Programme manual.
3. The Project shall not have the purpose or effect of producing profit. Profit is defined as a surplus of the receipts over the eligible costs approved by the Managing Authority when the request for payment of the balance is made.

## **§ 7**

### **GENERAL OBLIGATIONS**

1. The Lead Beneficiary shall implement the Project under its own responsibility and in accordance with Annexes III and IV and all relevant documents specified in § 2 with a view to achieving the objectives laid down therein. The Project may be subject to changes in accordance with § 9.
2. The Lead Beneficiary ensures that the Project is implemented in accordance with relevant legal and other requirements under applicable law and that all necessary permissions and approvals have been obtained.
3. The Lead Beneficiary shall implement the Project in compliance with this Contract, with requisite care, efficiency, transparency and diligence and in line with best practices in the field concerned. For this purpose the Lead Beneficiary shall ensure the financial, human and material resources required for the implementation of the Project as specified in Annex III.
4. The Lead Beneficiary is responsible for ensuring the implementation of the entire Project. They ensure that expenditure presented by the Beneficiaries participating in the Project has been incurred for the purpose of implementing the Project and corresponds to the activities assigned to each of the Beneficiaries, as described in Annex III and Annex IV and in the Partnership agreement. It checks that the expenditure presented by the Beneficiaries participating in the Project has been verified by the auditors, in accordance with § 15 of this Contract.
5. The Lead Beneficiary represents the Beneficiaries.
6. The Lead Beneficiary is responsible for transferring the corresponding amounts of the grant instalments to the Beneficiaries without delay, as stipulated in the Partnership agreement.
7. The Lead Beneficiary ensures that the declared costs of the Project or its part have not been already financed from the EU budget.
8. The co-financing within the Project cannot include state aid activities, as referred to in Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market of the European Union in application of Articles 107 and 108 of the Treaty (OJ EU L 187/1, 26.6.2014) and Section 2, Chapter 10 of the title

IV of the association agreement between the EU and Ukraine. The costs of the activities including state aid are ineligible within the Project.

## **§ 8**

### **OTHER OBLIGATIONS**

1. The Lead Beneficiary also undertakes to immediately inform the Managing Authority via the Joint Technical Secretariat:
  - 1) if circumstances arise which entitle the Managing Authority to reduce payment or to demand repayment of the grant wholly or in part;
  - 2) about any irregularities, suspicion of fraud or corruption or any other issues which can have influence on the proper Project implementation;
  - 3) upon request from the Managing Authority via the Joint Technical Secretariat about any savings identified within the Project budget.
  - 4) upon request from the Managing Authority via the Joint Technical Secretariat, about the implementation of the Project, within the deadlines set by them.
2. The Lead Beneficiary is subject to verifications and audits, which may be conducted by the European Commission, the European Anti-Fraud Office, the European Court of Auditors, Audit Authority supported by the members of the Group of Auditors, Managing Authority or Joint Technical Secretariat supported by Control Contact Point and any external auditor authorized to verify the expenditures in the Project. The Lead Beneficiary shall undertake any necessary corrective action within the deadlines specified in the findings and recommendations resulting from those verifications and audits. The Lead Beneficiary shall ensure that the Beneficiaries take steps to facilitate those verifications and checks and undertake any corrective actions referred to them. The above inspections may take place up to 7 years after the payment of the balance to the Lead Beneficiary.

## **§ 9**

### **AMENDMENT OF THE CONTRACT**

1. The Lead Beneficiary shall seek approval from the Managing Authority or Joint Technical Secretariat, if the Partnership, the approved Description of the Project or the Budget breakdown of the Project, as stipulated in Annex III and Annex IV, need to be changed.
2. With the exception of the cases enlisted in points 3. and 4. of this paragraph, any amendment to the Contract, including the annexes thereto, must be set out in writing in an addendum. This Contract can be modified only during its execution period. If an amendment is requested by the Lead Beneficiary, it must submit that request to the Managing Authority via the Joint Technical Secretariat at least 30 days before the date on which the amendment should enter into force, unless there are special circumstances duly substantiated by the Lead Beneficiary and accepted by the Managing Authority.
3. Where the amendment to the Budget or Description of the Project does not affect the basic purpose of the Project and the financial impact is limited to a transfer between items within the same main budget heading including cancellation or introduction of an item, or a transfer between main budget headings involving a variation of 15% or less of the amount originally entered (or as modified by addendum) in relation to each concerned main heading for eligible costs, the Lead Beneficiary may amend the Budget and inform in writing without delay the Managing Authority via the Joint Technical Secretariat accordingly. This method may not be used to amend the heading for administrative costs. To inform the Managing Authority the Lead Beneficiary shall follow procedures described in the Programme manual. The Managing Authority reserves the right to reject introduced modifications in case of non-compliance with the Programme

eligibility rules or where the amendment is not respecting the conditions for not signing an addendum.

4. Changes of address, bank account or auditor may simply be notified, although this does not stop the Managing Authority from opposing the Lead Beneficiary's choice of bank account or the Lead Beneficiary's and Beneficiaries' choice of auditors.

## **§ 10**

### **LIABILITY AND RESPONSIBILITY**

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

## **§ 11**

### **PROCUREMENT**

1. Procurement within the framework of this Grant Contract is to be made in compliance with chapter 4, section 1 of the IR. Tendering procedures at the level of Projects (procurement under grant) depend on the nationality and legal status of the Beneficiary launching the tender.
2. Beneficiaries based in Poland have to comply with Polish law on public procurement and the principle of competition described in the current version of the Programme Manual.
3. Beneficiaries from Belarus and Ukraine have to comply with rules set in Art. 52.2, 52.3 and 53 to 56 of the IR, namely:
  - 1) the contract shall be awarded to the tender offering best value for money, or as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests;
  - 2) for contracts with a value of more than EUR 60 000, the following rules shall also apply:
    - a) an evaluation committee shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria published



by the Beneficiary in advance in the tender documents. The committee must have an odd number of members with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications;

- b) sufficient transparency, fair competition and adequate ex-ante publicity must be ensured;
  - c) equal treatment, proportionality and non-discrimination shall be ensured;
  - d) tender documents must be drafted according to best international practice;
  - e) deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;
  - f) candidates or tenderers shall be excluded from participating in a procurement procedure if they fall within one of the situations described in Art. 106(1) of Regulation (EU, Euratom) No 966/2012. Candidates or tenderers must certify that they are not in one of these situations. In addition, contracts may not be awarded to candidates or tenderers which, during the procurement procedure fall within one of the situations referred to in Art. 107 of Regulation (EU, Euratom) No 966/2012;
  - g) procurement procedures set out in art. 53 to 56 of the IR shall be followed;
- 3) the exception is made for Beneficiaries' contracts with audit companies selected from the lists endorsed by relevant CCPs. In this case the negotiated procedure with one tenderer is allowed.

Beneficiaries based in Belarus and Ukraine have to comply with Belarusian and Ukrainian law on public procurement respectively, while these laws are stricter than the IR and to all matters not settled in the IR.

- 4. Beneficiaries have to comply with rules set in Art. 8 and 9 of Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, i.e. rules of nationality and origin.
- 5. To increase transparency and to prevent corruption, tender documents applicable within the Project shall contain an integrity clause. The template of the integrity clause is presented in the Programme Manual available on the Programme website.
- 6. The Managing Authority, Joint Technical Secretariat, National Authorities or other relevant Programme Bodies shall have the right to participate in the tender evaluation committee as an observer. The Lead Beneficiary will inform the JTS about the dates of any evaluation committee, included those of the Beneficiaries, 14 calendar days in advance.
- 7. If, according to the respective national law and EU directives, the public procurement law does not apply to contracts concluded within the framework of the Grant Contract, the Lead Beneficiary or the Beneficiaries participating in the Project shall ensure fair competition and equal treatment of potential contractors.
- 8. In case of breach of the procurement a financial correction will be made. The criteria for establishing the level of financial correction to be applied are laid down by the Managing Authority in the Guidelines on expenditure verification available on the Programme website.

## **§ 12**

### **COMMON CONCERNS**

- 1. The Parties to the Contract share a common concern in the fight against corruption, which jeopardizes good governance and the proper use of resources needed for

development, and, in addition, endangers fair and open competition based on price and quality. They declare, therefore, their intention of combining their efforts to fight corruption and, in particular, declare that whoever asks for, lets himself/herself be promised or accepts an advantage for acting or refraining from acting in the context of a mandate or contract within the framework of this Grant Contract will be considered to have committed an illegal act which shall not be accepted. Any actual case of this kind shall constitute sufficient grounds to justify termination of the Grant Contract, the annulment of the procurement or resulting award, or for taking any other corrective measure laid down by the applicable law.

2. The Parties to the Contract agree that activities and purchases financed from the Programme funds should be accessible to all citizens, including persons with disabilities. Persons with disabilities should participate in and implement the Project equally to other persons. Therefore the Lead Beneficiary will ensure accessibility to information about the Project and, to the extent possible, to the effects of the Project for persons with disabilities in accordance with the applicable legislation.
3. The Lead Beneficiary shall ensure the respect of human rights and applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards within the implementation of the Project.

### **§ 13**

#### **CONFLICT OF INTERESTS**

1. The Lead Beneficiary ensures that all necessary precautions had been undertaken to avoid conflicts of interests within the implementation of the Project and shall inform the Managing Authority without delay of any situation constituting or likely to lead to any such conflict. In the event of such conflict, the Lead Beneficiary and/or the Beneficiaries participating in the Project shall immediately take all necessary steps to resolve it.
2. There is a conflict of interests where the impartial and objective exercise of the functions of any person under this Contract is or may be compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another person.
3. The Managing Authority reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken if necessary.
4. The Lead Beneficiary shall ensure that the staff implementing the Project, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under this Contract, the Lead Beneficiary shall cause the replacement, immediately and without compensation from the Managing Authority, of any member of its staff in such a situation.

### **§ 14**

#### **OWNERSHIP AND DURABILITY**

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 vest in the Lead Beneficiary or Beneficiaries participating in the Project, in accordance with the Partnership agreement.
2. Unless otherwise determined in the Partnership agreement, where several Beneficiaries 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.
3. For the duration of the Project, goods procured under the Contract shall remain at the unrestricted disposal of the Project and shall not be transferred without prior written

approval of the Managing Authority. No ownership transfer is allowed within 5 years after the completion of the Project, unless the contracting parties agree otherwise.

4. Outputs of the Project shall be sustained in accordance with the Description of the Project in the Annex III to this Contract but no less than 5 years after the Project closure.
5. Any Project including an infrastructure component shall repay the Union contribution if, within 5 years of the Project closure it is subject to a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives. Sums unduly paid in respect of the Project shall be recovered by the Managing Authority in proportion to the period for which the requirement has not been fulfilled.
6. Beneficiaries shall ensure that equipment is used in accordance with the Project aims within 5 years of the Project closure. Beneficiaries shall repay the Union contribution if it is subject to a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives. Sums unduly paid in respect of the Project shall be recovered by the Managing Authority in proportion to the period for which the requirement has not been fulfilled.
7. The Beneficiaries shall keep all documents related to the Project for 5 years from the date of payment of the final balance. In particular they shall keep reports, supporting documents, as well as accounts, accounting documents and any other document relating to the financing of the Project.

## **§ 15**

### **PAYMENTS**

1. Payments are to be made by the Managing Authority on a basis of the request for payment. The first payment from the Managing Authority to the Project will be possible only after the decision on designation of the MA in accordance with article 25 of the IR and the submission of the Partnership agreement to the Joint Technical Secretariat.
2. The request for payment shall be drafted by the Lead Beneficiary in accordance with the Programme Manual using the template available on the Programme website. Requests for payment and all its parts shall be drafted in English and EUR.
3. The request for payment shall be supplemented with a financial guarantee in the following manner:
  - 1) Lead Beneficiaries based in Poland, Belarus and Ukraine and being non-governmental organisation shall comply with the following principles:
    - a) If one of the pre-financing paid under the Contract is more than 1 million EUR, its payment must be fully covered by a bank guarantee or bill of exchange with relevant declaration financial guarantee.
    - b) The financial guarantee must be denominated in EUR or local currency, conforming to the model available in the Programme Manual and, unless the Managing Authority otherwise agrees, provided by an approved bank or financial institution established in one of the Member States of the European Union. This guarantee shall remain in force until its release by the Managing Authority when the total amount of pre-financing under the Contract is cleared or after payment of the final balance;
  - 2) in case of the pre-financing, the financial guarantee shall be submitted after signing the Grant Contract. The pre-financing will not be paid out before the document is received by the Managing Authority.

4. Payments from Managing Authority will be made on the Lead Beneficiary's account nominated in EUR in accordance with the Financial Identification Form (attached as Annex V to this Contract). The following payment option will apply:

**Option 1**

**Pre-financing** ..... EUR (in words: ... EUR) representing maximum 35% of the grant foreseen for the implementation of the Project as set out in Annex IV and in § 5 section 2 will be paid by the Managing Authority within 30 days as from the date of approval by the Joint Technical Secretariat of correct documents provided along with the signed Contract:

- i) request for payment conforming to the model provided in the Programme Manual (available on the Programme website);
- ii) Partnership agreement signed by all Beneficiaries in accordance with § 3;
- iii) the financial guarantee if required in accordance with § 15 section 3;
- iv) valid building permission or its equivalent, if applicable;
- v) decision of the International Technical Assistance Commission or Resolution of the Council of Ministers of the Republic of Belarus about the project approval (depending on the applied procedure of the project approval) – applicable only for project with Belarusian beneficiaries.

The payment date might be prolonged if the documents delivered to the Joint Technical Secretariat require correction.

**Interim payment:** ..... EUR (in words: ... EUR) representing maximum 50% of the grant foreseen for the implementation of the Project as set out in Annex IV and in § 5 section 2 will be paid by the Managing Authority within 60 days as from the date of approval by the Joint Technical Secretariat of correct:

- i) request for payment conforming to the model provided in the Programme Manual (available on the Programme website);
- ii) interim progress report (narrative and financial parts) submitted to the Joint Technical Secretariat not later than 1 year after signing Contract;
- iii) expenditure verification certificates of all Beneficiaries declaring expenditures in accordance with § 16 section 3;
- iv) the financial guarantee if required in accordance with § 15 section 3.

The payment date might be prolonged if the documents delivered to the Joint Technical Secretariat require correction.

**Final balance payment** resulting from the expenditures incurred within the project during its whole period of implementation and the prior pre-financing, settled against the sum referred to in Annex IV and in § 5 section 2, paid by the Managing Authority within 60 days as from the date of approval by the Joint Technical Secretariat of correct:

- i) request for final payment conforming to the model provided in the Programme Manual (available on the Programme website);
- ii) final progress report (narrative and financial parts) submitted to the Joint Technical Secretariat not later than 3 months after the implementation period as defined in § 4 of this Contract;
- iii) expenditure verification certificates of all Beneficiaries in accordance with § 16 section 3.

The payment date might be prolonged if the documents delivered to the Joint Technical Secretariat require correction.

### **Option 2**

In case of all activities in the Project will be pre-financed by the Lead Beneficiary/Beneficiaries, the expenditures incurred will be reimbursed by the Managing Authority (applicable only at the request of the Lead Beneficiary).

**Final balance (one-off) payment:** ..... EUR (in words: ... EUR) representing the difference between 100% of the sum referred to in Annex IV and in § 5 section 2, and the expenditures incurred within the project during its whole period of implementation, paid by the Managing Authority within 60 days as from the date of approval by the Joint Technical Secretariat of correct:

- i) final request for payment conforming to the model provided in the Programme Manual (available on the Programme website);
- ii) final progress report (narrative and financial parts) submitted to the Joint Technical Secretariat not later than 3 months after the implementation period as defined in § 4 of this Grant Contract;
- iii) expenditure verification certificates of all Beneficiaries in accordance with § 16 section 3.

The payment date might be prolonged if the documents delivered to the Joint Technical Secretariat require correction.

5. The Beneficiary who decides to justify the costs of personnel based on lump sums if applicable, should declare the expenditure in the following way:
  - a) The first 50% of the lump sum declared in the interim progress report;
  - b) The second 50% of the lump sum declared in the final progress report.

The lumps sums should be paid to the Beneficiary under the condition that the indicator will be achieved in accordance with § 5 section 5.

6. The full interim payment may only be made if the part of the eligible expenditure actually incurred which is financed by the Managing Authority (ENI co-financing) stands at least 70% of the pre-financing payment as supported by the corresponding Request for Payment with all necessary attachments in line with this Contract and Programme Manual.

If request for payment and all necessary attachments are submitted but the consumption of the initial eligible pre-financing is less than 70%, the amount of the interim payment shall be reduced by the amount corresponding to the difference between the 70% threshold and the eligible amount actually consumed of the first pre-financing payment.

If the EU co-financing corresponding to the eligible expenditures presented in the interim progress report does not exceed 70% of the first advance payment transferred by the Managing Authority, the Beneficiary may, if agreed by the Managing Authority, present an additional progress report along with the corresponding Request for Payment before the end of the implementation period to receive the reduced part of interim payment.

7. Any interest from the pre-financing paid out to the Lead Beneficiary and transferred to the Beneficiaries will not be due to the Managing Authority and may be used by the Lead Beneficiary or Beneficiaries for the activities. However, for the purpose of

monitoring, the interest obtained will need to be mentioned in the interim and final progress reports. It is recommended to set up a non-interest bearing bank account.

8. If applicable, the verification of the request for payments may be suspended by notifying the Lead Beneficiary that:
  - 1) the amount indicated in its request of payments is not due, or;
  - 2) proper supporting documents have not been supplied, or;
  - 3) clarifications, modifications or additional information to the narrative or financial reports are needed, or;
  - 4) there are doubts on the eligibility of expenditure and it is necessary to carry out additional checks, including on-the-spot checks to make sure that the expenditure is eligible, or;
  - 5) it is necessary to verify whether presumed substantial errors, irregularities or suspicion of fraud or corruption have been detected, or;
  - 6) it is necessary to verify whether the Beneficiary(ies) have breached any substantial obligations under this Contract, or;
  - 7) the visibility obligations are not complied with.

The suspension of the time-limits for payments starts when the above notification is sent to the Lead Beneficiary. The new time-limit shall apply from the date on which the correctly formulated request for payment is recorded.

If, notwithstanding the information, clarification or document provided by the Lead Beneficiary, the payment request is still inadmissible, or if the award procedures for procurement or the implementation of the grant proves to have been subject to substantial errors, irregularities, fraud, corruption or breach of obligations, then the Managing Authority may refuse to proceed further with payments and may, in the cases foreseen in § 18, terminate accordingly this Contract. In addition, the Managing Authority may also suspend payments as a precautionary measure without prior notice, prior to, or instead of, terminating this Contract as provided for in § 18.

9. Obvious errors (arithmetical, typographical etc.) occurred in documents submitted by the Beneficiary (Project reports, requests for payments, etc.) can be corrected by the Joint Technical Secretariat or Managing Authority after prior consultations with the Beneficiary.

## **§ 16**

### **REPORTING RULES**

1. In accordance with the chosen payment option, as described in § 15 and the Programme Manual, the Lead Beneficiary shall submit to the Joint Technical Secretariat the following reports:
  - 1) a start-up report to be submitted within 3 months after this Contract has entered into force;
  - 2) brief narrative reports covering each 6-months period of the Project implementation to be submitted within 21 days after the end of each 6-month period;
  - 3) interim progress report/reports (narrative and financial parts) and a final progress report (narrative and financial parts), presenting the progress of the Project. The first interim progress report shall be submitted no later than 1 year after the entry of the Grant Contract into force.

2. The narrative and financial reports for each Beneficiary shall be verified by an auditor, who issues the expenditure verification certificate. All requirements, procedures and templates of documents applicable for Project auditors are provided in the Programme Manual and Guidelines on expenditure verification.
3. The expenditure verification certificates accompanying the request for payment of the final balance covers all expenditures not covered by any previous expenditure verification certificate.
4. Subject to article 58 of the IR, the Managing Authority shall make each payment subject to availability of funds due from the European Commission. The Managing Authority shall make payments in euro.
5. Any conversion into euro of the real costs borne in other currencies shall be done at the rate published on the InforEuro for the month during which the payment was done. The exchange rate risk resulting from the conversion of national currencies into euro and of euro to national currencies is borne by each Beneficiary.
6. Where the performance of this Contract is vitiated by substantial errors or irregularities or by fraud or corruption attributable to the Lead Beneficiary or Beneficiary, the Managing Authority may refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud. The Managing Authority may also suspend payments in cases where there are suspected or established errors, irregularities or fraud committed by the Lead Beneficiary or Beneficiary in the performance of another contract funded by the general budget of the European Union or by EDF, which are likely to affect the performance of the present Contract. Suspension shall take effect when the notification is sent by the Managing Authority.
7. If, during the verification of reports, it is established that there has been a breach of national or Union regulations, or the principles concerning project implementation specified in the current version of the Programme Manual (in particular, as regards public procurement or the need to safeguard the principle of competition), then relevant expenditures may be found as fully or partially ineligible, and may be reduced in a report. The above is applicable also to expenditures incurred prior to the signing of this agreement. The amount of ineligible expenditures related to public procurement or the safeguarding of the principle of competition shall be calculated in accordance with national regulations or principles. If, in a given country, there are no relevant regulations or rules, the amount of ineligible expenditures shall be established using the current document on financial corrections, issued by the Joint Technical Secretariat/Managing Authority and the European Commission.

## **§ 17**

### **COMPLAINTS**

1. The Lead Beneficiary is entitled to file complaints regarding findings that result from the work of auditors according to the national legislation and to the current Programme Manual. The Lead Beneficiary may file complaints on the work of auditor to the Joint Technical Secretariat.
2. The Lead Beneficiary is entitled to file complaints to the Managing Authority on the decisions of the Joint Technical Secretariat (JTS-Intermediate Body) or of the Managing Authority regarding the implementation of the Contract that result in a termination of the agreement, a reduction of the level of the co-financing or a need to recover the funds paid by the Managing Authority under the Contract.
3. The complaints referred to in points 1 and 2 shall be made by the Lead Beneficiary to the right institution in writing within 14 calendar days after the receipt of a decision in question by the Lead Beneficiary.

4. Complaints made after the deadline specified in point 3 are left to be unexamined. The information about leaving the complaints without consideration is submitted to the Lead Beneficiary within 7 calendar days after the date of the receipt of the complaint by the right institution.
5. Complaints may be withdrawn at any time by the Lead Beneficiary. The complaints withdrawn shall not be examined.
6. Complaints made within the period specified in point 3 are examined no later than within 14 calendar days after the day following the date of the receipt of the complaint by the right institution.
7. During the examination of complaints, the Joint Technical Secretariat or the Managing Authority may carry out additional procedures or require additional documents or clarifications, which automatically suspend the deadlines set under point 4. After conducting the additional procedures or actions the time period runs anew.
8. The Joint Technical Secretariat or the Managing Authority shall inform the Lead Beneficiary of the result of the complaints examination, stating the reasons for its position. The position of the Managing Authority is final.

## **§ 18.**

### **TERMINATION OF THE CONTRACT**

1. If either party believes that the Contract can no longer be executed effectively or appropriately, it shall consult the other party. Failing agreement on a solution, either party may terminate the Contract by delivering two months' written notice, without being required to pay compensation.
2. The Managing Authority may terminate the Contract, by giving a 7 day notice and without paying compensation of any kind:
  - 1) where the Lead Beneficiary fails, without justification, to fulfil any of the obligations incumbent on it and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of sending of the letter;
  - 2) where the Lead Beneficiary and Beneficiaries have not carried out the Project in the planned implementation period indicated in §4 of the Contract;
  - 3) where the Lead Beneficiary is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters or is in any analogous situation arising from a similar procedure provided for in the national legislation or regulations;
  - 4) where the Managing Authority has evidence on the Lead Beneficiary or any related entity or person, of grave professional misconduct, this also applies to Beneficiaries and agents of the Lead Beneficiary;
  - 5) where the Managing Authority has evidence on the Lead Beneficiary or any related entity or person, of fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the European Union's financial interests, this also applies to Beneficiaries and agents of the Lead Beneficiary;
  - 6) where the Lead Beneficiary changes legal status, unless an addendum recording that fact is drawn up;
  - 7) where the Lead Beneficiary does not comply with § 7, 8 and 13;



- 8) where the Lead Beneficiary makes false or incomplete statements to obtain the grant provided for in the Contract or provides reports that do not reflect reality;
- 9) where the Lead Beneficiary has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
- 10) where the Managing Authority has evidence on the Lead Beneficiary or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant, this also applies to Beneficiaries and agents of the Lead Beneficiary;

In the cases referred to in sub-points 4), 5) and 10) above, any related person shall mean any natural person with powers of representation, decision-making or control in relation to the Lead Beneficiary. Any related entity shall mean in particular any entity which meets the criteria laid down by article 1 of the Seventh Council Directive n° 83/349/EEC of 13 June 1983.

3. The Lead Beneficiary who has made false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations may be excluded from all contracts financed by the Managing Authority for a maximum of five years from the date on which the infringement is established, as confirmed following the adversarial procedure with the Lead Beneficiary. This period can be extended to 10 years in the event of a repeated offence within 5 years of the date referred above.
4. In the event of the termination of the Contract by the Managing Authority in the cases specified in § 15, the Managing Authority may request a full or partial repayment of sums already paid from the grant, in proportion to the gravity of the failings in question and after allowing the Lead Beneficiary to submit its observations.
5. In the event of the termination of the Contract by the Managing Authority under the cases specified in section 2, the Managing Authority shall increase the amounts due by adding interest using rates specified in § 19 section 4 of this Contract. The interests shall be calculated for the time which elapses between the date of the actual payment of funds from the Managing Authority to Lead Beneficiary's bank account, and the date of the Contract termination.
6. Prior to, or instead of, terminating the Contract as provided for in this paragraph, the Managing Authority may suspend payments as a precautionary measure without prior notice.
7. In addition, and without prejudice to the right to terminate the Contract in accordance with the above sections 1 and 2, the Managing Authority may, by a duly reasoned decision, if the Project is not implemented or is implemented poorly, partially or late, reduce the grant initially provided for in line with the actual implementation of the Project on the terms laid down in this Contract.

## **§ 19.**

### **RECOVERY OF FUNDS**

1. Where the award procedure or performance of this Contract is vitiated by substantial errors or irregularities or by fraud attributable to the Lead Beneficiary or where it is estimated that there has been a breach of national or union regulation, or the principles concerning Project implementation, the Managing Authority shall recover the amount already paid in proportion to the seriousness of the errors irregularities or fraud. This also applies to expenses incurred before the signature of this Contract.
2. The Managing Authority shall make the financial corrections required in relation to individual or systemic irregularities detected in the Project, or in the Programme.

Financial corrections shall consist of cancelling all or part of the Union contribution to the Project. The Managing Authority shall take into account the nature and gravity of the irregularities and the financial loss and shall apply a proportionate financial correction.

The contribution cancelled may not be reused for the Project that was the subject of a financial correction or, where a financial correction is made for a systemic irregularity for any Project affected by the systemic irregularity.

3. In cases when there is still a possibility to deduct the ineligible amounts unduly paid, found in the already approved interim progress reports or in the final progress report the Joint Technical Secretariat or the Managing Authority offset the amount unduly paid from the next pre-financing payment/ final payment. The JTS informs the Lead Beneficiary in writing of the fact of the reduction of the payment and of the ineligible expenditures.
4. In cases when offsetting of an amount unduly paid from the next payment is not possible (i.e. if the amount to be returned is larger than the amount of the next pre-financing payment, etc.), and an Irregularity Note has been issued by either an auditor, the JTS or the Managing Authority the Managing Authority makes a decision to issue a recovery order for the Lead Beneficiary.
5. In case the ineligible expenditure is discovered after the final payment for the Project has been made, the Managing Authority issues a recovery order to the Lead Beneficiary and recovers the amount(s) unduly paid. The Lead Beneficiary undertakes to repay according to point 1 of this paragraph any amounts paid in excess of the final amount due, to the Managing Authority within **45 days** of the receiving of the recovery order, the latter being the letter by which the Managing Authority requests the amount owed by the Lead Beneficiary. In justified cases the Managing Authority may extend the deadline for recovery.
6. Should the Lead Beneficiary fail to make repayment within the deadline set by the Managing Authority, the Managing Authority shall increase the amounts due by adding interest at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro, on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the Managing Authority, and the date on which payment is actually made.
7. In case the VAT paid by the Project can be recovered, the concerned Beneficiary shall return the amount of the VAT already declared.
8. Amounts to be repaid to the Managing Authority may be offset against amounts of any kind due to the Lead Beneficiary.
9. Bank charges incurred by the repayment of amounts due to the Managing Authority shall be borne entirely by the Lead Beneficiary.
10. If the Contract is terminated for any reason whatsoever, the guarantee securing the pre-financing may be invoked forthwith in order to repay the balance of the pre-financing or interim payment still owed by the Lead Beneficiary, and the guarantor shall not delay payment or raise objection for any reason whatever.
11. The Lead Beneficiary has to set up the procedure of recovering the amounts unduly paid from the Beneficiaries in the Partnership agreement. If the Lead Beneficiary does not succeed in securing repayment from the Beneficiary concerned, the Lead Beneficiary shall inform the Managing Authority about this matter immediately. The Managing Authority shall formally notify the concerned Beneficiary to repay to the Lead Beneficiary. If the concerned Beneficiary does not repay, the Managing Authority shall

request the participating country in which the concerned Beneficiary is established to reimburse the amounts unduly paid in accordance with article 74(2) to (5) of the IR.

12. Where the recovery relates to a claim against a Beneficiary established in Poland and the Managing Authority is unable to recover the debt, the Member State shall pay the due amount and claim it back from the Beneficiary. Where the recovery relates to a claim against a Beneficiary established in Belarus or Ukraine and the Managing Authority is unable to recover the debt, the level of responsibility of the respective CBC partner country in which the Beneficiary is established shall be such as it is laid down in the relevant financing agreements between the European Commission and that country referred to in articles 8 and 9 of the IR.
13. The European Commission may at any time take over the task of recovering the amounts directly either from the Beneficiary or from the country concerned.

## § 20

### VISIBILITY

1. Unless the Managing Authority requests otherwise, any notice or publication by the Project, including a conference or a seminar as well as all other information and promotion measures within the Project, must be performed in compliance with the requirements set in the Programme Manual.
2. In particular, the Lead Beneficiary shall mention the Project and the European Union's financial contribution in information given to the final beneficiaries of the Project, in its reports and in any dealings with the media. It shall display the Programme logo and the EU flag wherever appropriate.
3. Any notice or publication by the Lead Beneficiary or any of the Beneficiaries concerning the Project, including those given at a conference or seminar, must specify that the Project has received EU funding. Any publication by the Lead Beneficiary and Beneficiaries, in whatever form and by whatever medium, including the internet, must include the following statement: "This document has been produced with the financial assistance of the European Union, **under the Cross-border Cooperation Programme Poland-Belarus-Ukraine 2014-2020**. The contents of this document are the sole responsibility of <Lead Beneficiary's/Beneficiary's name> and under no circumstances can be regarded as reflecting the position of the European Union."
4. The Lead Beneficiary authorises the Managing Authority, the Joint Technical Secretariat and the European Commission to publish in any and by any means, the following information:
  - a) the name of the Lead Beneficiary and Beneficiaries
  - b) contact data of the Project representatives
  - c) the Project title
  - d) the summary of the Project activities
  - e) the objectives of the Project
  - f) the Project start and end dates
  - g) the grant amount and the total eligible cost of the Project
  - h) the geographical location of the Project implementation
  - i) abstracts of the interim progress reports and final progress report
5. The Lead Beneficiary every quarter (starting from the date of signing the Grant Contract) will ensure the submission of pictures and written information about the progress of the Project to the Joint Technical Secretariat on behalf of itself and other Beneficiaries.
6. The Lead Beneficiary shall submit to the Managing Authority, via the Joint Technical Secretariat, any audio-visual documentation from the Project implementation and shall

give their consent for the use of such documentation by the Managing Authority or the Joint Technical Secretariat.

7. The Lead Beneficiary consents to the Managing Authority's and any institutions' appointed by the Managing Authority publication of audiovisual documentation on the implementation of the Project in any form and through any media.

## **§ 22**

### **APPLICABLE LAW AND DISPUTE SETTLEMENT**

1. This Contract shall be governed by the Polish law.
2. The Parties shall aim to settle amicably any dispute arising between them during implementation of this Contract. In the event of failure to reach an amicable agreement, the dispute may, by common agreement of the Parties, be submitted to the conciliation of the European Commission. In the event of failure of the above measures, each party may submit the dispute to the relevant Polish courts.

## **§ 23**

### **CONTACT ADDRESSES**

1. Any communication relating to this Contract must be in writing, in English, state the number and title of the Project and be sent to the following addresses:

#### **For the Managing Authority:**

Ministry of Economic Development of Poland

Pl. Trzech Krzyży 3/5

00-507 Warsaw, Poland

#### **For the JOINT TECHNICAL SECRETARIAT:**

Center of European Projects

39a Domaniewska Street

02-672 Warsaw, Poland

#### **For the Lead Beneficiary:**

<address of the Lead Beneficiary for correspondence>

## **§ 24**

### **ANNEXES**

The following documents are annexed to this Contract and form an integral part of it:

- Annex I: Authorisation for the Managing Authority's representative
- Annex II: Authorisation for the Lead Beneficiary's representative (Legal Entities Form)
- Annex III: Description of the Project
- Annex IV: Budget for the Project

Annex V: Financial Identification Form

Drawn up in the English language in three originals, two originals being for the Managing Authority, and one original being for the Lead Beneficiary.

**For the Lead Beneficiary**

Name

Title

Signature

Date

**For the Managing Authority**

Name

Title

Signature

Date