

**Partnership Agreement under over-contracting conditions**

eMS Code.....

**Agreement between Lead Beneficiary and Project Beneficiaries**  
**in the project {name, project code}**  
**financed under the Interreg V-A Romania – Hungary Programme**

**PARTNERSHIP AGREEMENT**  
**under over-contracting conditions**  
**INDICATIVE TEMPLATE**

Having regard to

- ✓ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006;
- ✓ Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal;
- ✓ Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on the specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006;
- ✓ Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds;
- ✓ Interreg V-A Romania-Hungary Programme (hereinafter referred to as Cooperation Programme), approved by the European Commission through Decision no. 9112 / 09.12.2015;
- ✓ Commission Implementing Regulation (EU) No 215/2014 of 7 March 2014 laying down rules for implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development

Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund with regard to methodologies for climate change support, the determination of milestones and targets in the performance framework and the nomenclature of categories of intervention for the European Structural and Investment Funds;

- ✓ Memorandum of Implementation (MoI) – Arrangements between Member States participating in the Interreg V-A Romania-Hungary Programme - between the Ministry of Regional Development, Public Administration and European Funds from Romania, acting as Member State and Managing Authority with Certification function, the Prime Minister's Office from Hungary, acting as Member State and National Authority, and the Audit Authority within the Romanian Court of Accounts, acting as Audit Authority.

the following Agreement is concluded between

..... [Name, address, fiscal registration number], represented by .....as Lead Beneficiary (hereinafter referred to as LB) of the project proposal called....<Acronym>

and

..... [Name, address, fiscal registration number], represented by .....as Project Beneficiary no.2 (hereinafter referred to as PB2),

..... [Name, address, fiscal registration number], represented by ..... as Project Beneficiary no. 3 (hereinafter referred to as PB3),

..... *To be multiplied for as many PBs as necessary*

for the implementation of the project ..... [index and title of the project], approved by the Monitoring Committee of the "Interreg V-A Romania – Hungary Programme" - on ..... [date] in ..... [place].

### **§ 1 Object**

- 1) The object of this Agreement is the organisation of a partnership in order to implement the project ..... [index and title of the project], selected under the Interreg V-A Romania – Hungary Programme.
- 2) Through the present Agreement, the parties establish their rights and duties, the way of achieving their tasks and the relations between Lead beneficiary and Project Beneficiaries, which shall apply in order to achieve the goals of the above-mentioned project.
- 3) The terms and conditions herein are acknowledged and accepted by all parties.

### **§ 2 Duration of the Agreement**

- 1) The Agreement enters into force on the signature date the last party signs. The last party signing has the obligation to note the date.
- 2) The beginning date of the implementation of the project may be:
  - the next day the notification of approval of the project by the Monitoring Committee is received, or
  - the next day the Subsidy contract is signed, or
  - between notification and signing the Subsidy contract.

The project implementation starts on .....

- 3) The implementation period of the project is of ..... months.
- 4) During the implementation period of the project, as well as after the end of the implementation period for a 3-years period from the official closure of the Interreg V-A Romania-Hungary, all Project Beneficiaries have the obligation to preserve and to present, to the Joint Secretariat (within the Regional Office for Cross-Border Cooperation Oradea for Romania-Hungary Border - BRECO, Romania), MA (within the Ministry of Regional Development, Public Administration and European Funds from Romania), NA (within Prime Minister Office from Hungary), Certifying Authority (within the Romanian Ministry of Regional Development, Public Administration and European Funds), Audit Authority (within the Romanian Court of Accounts), European Commission (EC), European Court of Auditors and any other body designated to perform controls on the use of the financing, all project related documents, including the inventory for the actives gained as a result of using the funds. The time period shall be interrupted either in the case of legal proceedings or by a duly justified request of the Commission.
- 5) The Agreement is valid for 5 years from the financial closure of the project.

### **§ 3 Value of the project**

- 1) The total eligible value is ..... EUR <amount in figures> (non-refundable financing and the contribution of the beneficiaries-), out of which:
  - i. ... <amount in figures> EUR ERDF, representing ... %
  - ii. ... <amount in figures> EUR State Budgets Co-financing, representing ...%
  - iii. ... <amount in figures> EUR Beneficiaries own contribution, representing ...%

### **§ 4 Financing of the project**

- 1) MA awards a grant contribution from the ERDF of .....<amount in figures> / .....EUR <amount in letters>, representing .....% of the total eligible value of the project mentioned at article 3 paragraph 1 from the present Agreement.
- 2) In case the Programme exceeds the 100% absorption, or the maximum absorption level in case of a decommitment, the Lead Beneficiary and its project partners commit to support from their own budgets the funds necessary for the implementation of the project, according to the provisions of the Subsidy Contract, the

Application Form approved by the Monitoring Committee and its annexes, the present Agreement, the Project Implementation Manual and the national and European legislation in force.

- 3) MA awards to Romanian beneficiaries a grant contribution from the national state budget of .....EUR <amount in figures> / .....<amount in letters> Euro, representing .....% of the total eligible value of the project specified at article 3 paragraph 1 from the present Agreement.
- 4) NA awards Hungarian beneficiaries a non-repayable contribution from the national state budget of .....EUR <amount in figures> / .....<amount in letters> Euro, representing ..... % of the total eligible value of the project specified at article 3 paragraph 1 from the present Agreement.
- 5) The Lead Beneficiary and Project Beneficiaries participate in the project with their own contribution representing .....<amount in figures> / .....<amount in letters>, representing .....% of the total eligible value of the project mentioned in article 3 paragraph 1 of the present Agreement and support the non-eligible expenditure, apart from the project budget, according to their contribution to the project.
- 6) The total eligible budget of LB / PB 2 / PB 3 is .... out of which ...% represents ERDF, ...% represents state national co-financing and ...% represents its own contribution<sup>1</sup>.
- 7) The Lead Beneficiary is responsible in front of the Managing Authority for the sound financial management of the project.
- 8) The Lead Beneficiary receives the amounts mentioned at paragraph 1 directly from the MA, and is responsible for transferring the amounts to each Project Beneficiary, according to the Subsidy contract.
- 9) The Romanian Project Beneficiaries receive the amounts mentioned at paragraph 3 directly from the MA, according to the co-financing contract; the Hungarian Project Beneficiaries receive the amounts mentioned at paragraph 4 directly from the NA, according to the co-financing contract
- 10) Any modification of the project has to be agreed by all Project Beneficiaries, justified and submitted by the LB to the Joint Secretariat in a written form.

## **§ 5 Eligible Expenditures**

- 1) The expenditures related to the project are eligible provided that they respect the applicable European and national legislation in force, the Interreg V-A RO-HU Programme and Call for Proposal rules, they are stipulated in the project and the respective beneficiary budget, and provided that they comply with the terms and conditions stipulated in the Subsidy contract.

## **§ 6 Reimbursement of the expenditures**

- 1) A first level control system has been established both in Romania and Hungary in order to check the expenditure made by the Project Beneficiaries from each country.

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<sup>1</sup> This article shall be completed for each beneficiary.

Therefore, each beneficiary has the obligation to ensure that its expenditures are checked and validated by a controller from the state on whose territory it is located, before the reimbursement claim is submitted.

- 2) The Schedule for first level control requests and reimbursement claims for the project is provided in Annex 2 to the present Agreement.
- 3) Regular reporting period is 3 months in case of the projects with an implementation period under 18 months, and 4 months for the projects exceeding 18 months, from the start of project implementation, as set-up in the Subsidy contract. The instructions presented in the reporting models must be followed exactly. All reports must be submitted in English.
- 4) The LB must present all documents to the controllers and make sure that all beneficiaries present their documents as well, in maximum 15 working days after the reporting period, in order to be verified before drafting and forwarding the reimbursement claims. Exception is the final report, where the cut-off date is extended to 30 working days, so that the deadline for submitting the reimbursement claim to the JS will be met. All supporting documents should be uploaded by the LB and Project Beneficiaries via electronic system.
- 5) The LB must submit to Joint Secretariat (JS) the reimbursement claims based on the conditions provided hereunder and in the applicable legislation.
- 6) The Reimbursement claims submitted by the LB shall contain only validated expenditure and shall be supported by the First Level Control Certificate and afferent Report issued by the controllers of the Project Beneficiaries. The expenditures that were not validated by the controllers are deemed to be ineligible for the Programme and shall not be requested for reimbursement.
- 7) Even if no expenditure was incurred, the progress report shall be submitted in due time to the JS.
- 8) The LB has the possibility to deviate from the spending forecasts and submit reimbursement claims at any given time for one or more Project Beneficiaries, provided that the reimbursement claim is not lower than 10,000 euro ERDF.
- 9) The total amount to be requested for first level control verification mentioned in Annex 2 at the half of the implementation period cannot be changed.
- 10) In case the total amounts requested for first level control verification are lower compared to the total amounts forecasted for the half of the implementation period in Annex 2, the MA is entitled to decommit project funds by reducing the original project budget and the corresponding ERDF contribution, as follows:
  - a) 10% reduction of the budget for the beneficiaries who have requested amounts for first level control lower than 75% of the initial amounts included in the schedule for first level control requests.
  - b) 25% reduction of the budget for the beneficiaries who have requested amounts for first level control less than 50% of the initial amounts included in the schedule for first level control requests.

- 11) In case of a decision on the decommitment at project level, the Lead Beneficiary shall submit to the MA a revised budget, reflecting the decommitment, within two weeks following the receipt of MA's notification. In case of failure to respect the deadline, the decommitment shall be applied proportionally to all budgetary lines. The modification of the Subsidy contract in case of decommitment at project level shall take the form of a decision of the representative of the Managing Authority signing the Subsidy contract, which will be notified to the Lead Beneficiary, and which becomes part of the Subsidy contract.
- 12) In case of decommitment, the Lead Beneficiary together with the Project Beneficiaries may decide to give up financing, but in this case all the funds paid as advance / reimbursed shall be recovered by the Managing Authority. The decommitment shall be done without prejudice for beneficiaries' obligation to implement all the activities and achieve all the results, according to the approved Application Form.
- 13) In case beneficiaries decide not to externalize activities, as foreseen in the approved Application Form, and decide to implement them "in house", without requesting the reimbursement of the respective amounts from the Programme, the project budget shall be reduced automatically with the respective amounts. To this end the beneficiaries have the obligation of informing the MA in due time, through the LB, regarding the decision taken and request the reduction of the budget. The reduction of the budget shall take the form of a decision of the representative of the Managing Authority signing the Subsidy contract, which will be notified to the LB/PBs, and which becomes part of the Subsidy contract.
- 14) The Progress Report and Reimbursement Claim have to be submitted to the JS at the latest within 3 months after the reporting period. The final Progress Report and final Reimbursement Claim have to be submitted to the JS at the latest within 4 months after the end date of the implementation period of the project. Not meeting the deadline may result in not reimbursing the amounts.
- 15) The funds are reimbursed only in Euro and will be transferred by the MA into a special bank account opened exclusively for the project, indicated by the LB. Costs related to fluctuation of foreign exchange currency are ineligible expenditures for the project. The exchange rate risk is borne by the partner concerned.
- 16) The expenditure incurred in a currency other than the euro shall be converted into euro by using the monthly accounting exchange rate of the Commission in the month during which that expenditure was submitted for verification to the first level controller.
- 17) The LB transfers the received ERDF amounts to all beneficiaries within 5 working days as of cashing in the amounts from the MA and will make no deduction, retention or further specific charge from the ERDF amounts it receives.

## **§ 7 Rights and duties of the parties**

### **A. Lead Beneficiary**

In addition to the obligations of the LB as already stated, the LB undertakes the following duties:

- 1) The LB guarantees that it is entitled to represent all beneficiaries participating in the project and that it has established with the project partners the division of the responsibilities regarding the project in the form of the Partnership Agreement.
- 2) The LB has the responsibility of implementing the project according to the provisions of the Subsidy contract, of the Application Form and its annexes, approved by the Monitoring Committee of the present Partnership Agreement (annexed to the Subsidy contract) and of the national and European legislation in force. The LB shall be responsible in front of the MA for the implementation of the obligations assumed in the Subsidy contract and in the Partnership Agreement, for the implementation of the project and for achieving the goals stipulated in the contract and its annexes.
- 3) The LB guarantees furthermore that itself and all beneficiaries participating in the project have complied with all legal requirements and that all necessary approvals for the proper implementation of the project have been obtained.
- 4) The LB ensures the implementation of the entire project and has to:
  - a. assume responsibility for ensuring implementation of the entire project;
  - b. ensure that expenditure presented by all Project Beneficiaries has been incurred in implementing the project and corresponds to the activities agreed between all the Project Beneficiaries, and is in accordance with the provisions of the Subsidy contract;
  - c. inform the MA, within 5 working days from the occurrence of such circumstances, if one of the disbursement conditions ceases to be fulfilled, or circumstances arise which entitle the MA to reduce payment or to demand repayment of the subsidy wholly or in part;
  - d. comply with the regulations referred to in the preamble to this Agreement as well as with relevant national and European legislation;
  - e. know and observe the provisions of the Guide for Applicants (GfA) for Open Call for proposals, paying special attention to the limitations (value, percentage, duration etc) referred to therein, and of the Subsidy contract;
  - f. observe and make sure that all Project Beneficiaries observe the national and European legislation on state aid, equal opportunities, sustainable development, environmental protection;
  - g. make sure and satisfy itself that all Project Beneficiaries make all expenditure according to the Programme relevant public procurement rules;
  - h. ensure that all the Project Beneficiaries select the final beneficiaries of the projects (target groups) by a transparent procedure;
  - i. present its own expenditure, and ensure that the Project Beneficiaries present their expenditures, to the controllers for verification, in maximum 15 working days after the end of the reporting period, except for the final report, where the cut-off date is extended at 30 working days, so that the deadline for submitting the reimbursement claim to the JS will be met. Requests for first level control not accompanied by appropriate supporting documents will not be taken into consideration;



- j. ensure that all Project Beneficiaries submit their contributions to the reimbursement claim at least 10 working days before the deadline for submitting the reimbursement claim to the JS;
  - k. ensure that all Project Beneficiaries have a proper analytical accounting system and the expenditure is properly registered; the accounting system must be in line with the national legislation;
  - l. observe and make sure that all Project Beneficiaries observe the provisions of the Visual Identity Manual (published on the programme website [www.interreg-rohu.eu](http://www.interreg-rohu.eu)).
- 5) The LB ensures that the first level controllers have verified the expenditure presented by the Project Beneficiaries participating in the project.
  - 6) When drafting the reimbursement claim, LB is liable towards the MA for consolidating the information from all Project Beneficiaries requesting reimbursement of the expenditure, being responsible for collecting documents and information from every partner. Irrespective of the time when reimbursement claims are submitted, LB submits for each reporting period consolidated progress reports, being responsible for collecting documents and information from every partner.
  - 7) LB is liable towards the MA for ensuring that all of its beneficiaries have a legal status, that they have the capacity to manage the project, that they observe the provisions of the GfA. Moreover the LB is liable towards the MA for ensuring that its beneficiaries fulfil their obligations regarding the implementation of the project. The LB is also liable towards the MA for all irregularities, even those committed by the Project Beneficiaries.
  - 8) The LB must answer all written requests from the MA, JS or other bodies involved in the implementation of the Programme within the deadline stipulated in the respective request. The LB is responsible for gathering the information from all beneficiaries in due time.
  - 9) The LB takes full responsibility for the damages caused to third parties from its own fault during the implementation of the project. The MA has no responsibility for the damages caused to third parties as a result of executing the contract.
  - 10) The LB must not receive or have received money from other programmes for the project concerned. The LB ensures that the Project Beneficiaries respect the same obligation.
  - 11) Any results or rights related to the project, including author's rights and/or any other intellectual or industrial property rights, obtained from the implementation or as a result of the implementation of the contract, except the cases where such rights existed before the contract, shall represent the property of the LB and/ or its partners, as the case may be.
  - 12) The LB cannot mortgage or impose any other form of bank guarantee on the goods purchased from the financing throughout the implementation period of the project and 5 years after the financial closure of the project.
  - 13) In case of projects comprising investment in infrastructure or productive investment, the Lead Beneficiary shall reimburse the MA the amounts received if within 5 years



after the financial closure of the project it is subject to any of the following:

- a) a cessation or relocation of a productive activity outside the programme area;
- b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
- c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

- 14) The Lead Beneficiary understands and agrees that the MA has delegated tasks to the JS, according to the Framework Agreement concluded between the MA and the JS and therefore the Lead Beneficiary agrees to cooperate with the JS in the same way as with the MA.
- 15) In duly justified cases, not imputable to the beneficiaries, when a Project Beneficiary is in impossibility of fulfilling its obligations according to the contract, the partner may request through the Lead Beneficiary and with the written agreement of all beneficiaries, the suspension of the implementation period, for a clearly determined period of time. After verifying the conditions, the MA may approve, under its specific conditions, through a written decision of the Head of MA signing the Subsidy contract, the suspension of the contract starting with the date indicated by the partner. The Beneficiary requesting the suspension of the implementation period has the obligation to inform MA in maximum 3 working days from the date when he took notice of the situation, in any written form (including e-mail) and the Lead Beneficiary has the obligation to submit to MA all the relevant documents in maximum 5 working days, including the written agreement of all Project Beneficiaries. During the suspension period no activity shall be performed by any of the Project Beneficiaries.
- 16) The LB has the obligation to inform the MA about any situation that may cause the termination or delay in the execution of the subsidy contract, within 5 working days from the date of acknowledgment of such a situation. In this case, the MA may decide the termination / suspension of the subsidy contract.
- 17) If the MA demands repayment of the ERDF in accordance with the Subsidy contract, the LB is liable to the MA for the total ERDF that has been reimbursed to him.
- 18) The LB is at all times obliged to retain for audit purposes all files, documents and data about the project on customary data storage media in a safe and orderly manner. The LB guarantees that all of its Project Beneficiaries fulfil this duty.
- 19) During the implementation period of the project as well as after the end of the implementation period of the project, for a 3 years period from the official closure of the Interreg V-A Romania-Hungary Programme, the LB has the obligation to preserve and to present, to the Joint Secretariat (within the Regional Office for Cross-Border Cooperation Oradea for Romania-Hungary Border - BRECO, Romania), MA, Certifying Authority (within the Romanian Ministry of Regional Development, Public Administration and European Funds), Audit Authority (within the Romanian Court of Accounts), European Commission (EC), European Court of Auditors and any other body designated to perform controls or audits on the use of the financing, all project documents, including the inventory for the actives gained as a result of using the funds. The time period shall be interrupted either in the case of legal proceedings or by a duly justified request of the Commission. The documents must be properly

archived. Also, the MA must be informed on the location of these documents.

- 20) The LB must observe the recommendations received after an audit/ control, otherwise the MA has the right to terminate the Subsidy contract. The LB ensures that the Project Beneficiaries fulfil this obligation.

**B. Project Beneficiary (including the Lead Beneficiary where applicable)**

- 1) LB/PB implements the part of the project for which it is responsible, in due time, according to the descriptions of the (individual components) Application Form approved by the Monitoring Committee and other documents agreed between the MA and the LB.
- 1) In case the Programme exceeds the 100% absorption, or the maximum absorption level in case of a decommitment, and the LB fails to ensure the implementation of the entire project from own resources, the MA has the right to request the LB all or part of the financing, proportionally with the reimbursed amounts. The Beneficiaries have the obligation of repaying the respective amounts within 30 calendar days from the receiving date of the MA notification. If the LB does not manage to recover the funds from all beneficiaries participating in the project, it will inform the MA and send all necessary documents to the MA, in order to take all necessary measures for recovering such amounts, according to the provisions of Mol and relevant legislation in force.
- 2) The Project Beneficiary has the responsibility of implementing the project according to the provisions of the present Agreement, of the national and European legislation in force.
- 3) PB notifies the Lead Beneficiary regarding any situation that may lead to the temporary or permanent impossibility or to any other drawback in the implementation of the project in maximum 3 working days from the event causing the impossibility.
- 4) LB/PB do the utmost to obtain the necessary approvals, agreements and construction authorizations within 9 months from the signing of Subsidy contract.
- 5) LB/PB observes the national and European legislation in general and especially on public procurement, state aid, equal opportunities, sustainable development, and environmental protection.
- 6) LB/PB is responsible for its budget up to the amount it participates in the project.
- 7) LB/PB shall maintain a proper analytical accounting system and separate bank accounts for the project.
- 8) The Project Beneficiary supports the Lead Beneficiary in drawing up progress reports and the final report by providing the required data on time; drafts and submits to the Lead Beneficiary all necessary data for the reimbursement claims.
- 9) The Project Beneficiaries have the obligation to respond to any request of the Lead Beneficiary within the deadline stipulated in the respective requests.
- 10) PB has to inform the LB, according to the provisions of the Project Implementation Manual, 15 working days before the date he intends to launch a public procurement procedure, in case the estimated value of the public procurement contract is below

the thresholds mentioned in the applicable national legislation with up to 1,000 euro.

- 11) Each Project Beneficiary is responsible for uploading in the electronic system the progress reports and any other documents, including copies of each supporting document (bills, documents related to the procurement procedure, bank account statements etc.) in due time and signed by the legal representative of the beneficiary, bearing the mentions "according to the original" and also the project code.
- 12) The beneficiaries must present the documents related to the expenditures to the first level control in 15 working days from the end of the reporting period, according to the spending forecast attached. Exception is the final report, where the cut-off date is extended to 30 working days, so that the deadline for submitting the reimbursement claim to the JS will be met.
- 13) LB/PB cannot mortgage or impose any other form of bank guarantee on the goods purchased from the financing throughout the implementation period of the project and 5 years after the financial closure of the project.
- 14) Each Project Beneficiary must submit to the Lead Beneficiary any documents necessary for drafting specific documents requested by the MA/JS or other implementing bodies of the Programme.
- 15) The Project Beneficiaries will produce all documents required for the audit, control or evaluation, provide necessary information and give access to its business premises. The Lead Beneficiary and the Project Beneficiary are at all times obliged to retain for audit and control purposes all files, documents and data about the project for a period of three years after the official closure of the Interreg V-A Romania-Hungary Programme. The documents must be properly archived. Also, the MA must be informed on the location of these documents.
- 16) The Project Beneficiaries must implement the measures included in the action plan, at the stipulated deadlines, set by the Lead Beneficiary/MA/JS, according to the recommendations resulted from the audit missions of the European Commission, Audit Authority or other empowered audit and control bodies.
- 17) All Project Beneficiaries understand that the Managing Authority (MA) and the National Authority (NA) are entitled to verify and to control the proper use of funds by the LB or by Project Beneficiaries. The verifications to be carried out by the Managing Authority/National Authority shall cover administrative, financial, technical and physical aspects of projects, as appropriate. The MA and NA shall be responsible for the control of the proper use of funds by the LB or by beneficiaries, by preventing, detecting and correcting irregularities and recovering amounts unduly paid together with interest on late payments where appropriate.
- 18) The Project Beneficiaries understand and agree that the MA may delegate tasks to the JS, therefore JS may act in the name and on behalf of MA.
- 19) In case an irregularity is discovered, the Project Beneficiary is responsible to reimburse the ERDF amounts affected by the irregularity to the Lead Beneficiary, even if the irregularity was committed by a sub-contractor, in 20 calendar days from notification;
- 20) Any extra payment done by the Lead Beneficiary to a Project Beneficiary is considered

unduly paid amount, and the Project Beneficiary has to repay the respective amounts in 20 calendar days from the receiving date of the notification from the Lead Beneficiary.

- 21) In case the unduly paid amounts are not reimbursed to the Lead Beneficiary in due time, the Project Beneficiary has to pay delay penalties. Starting with the 21<sup>st</sup> day as of the expiry of the deadlines stipulated at paragraphs 20, 21, an interest rate 1.5% higher than the rate applied by the European Central Bank as in force on the first working day from the month of the deadline date shall be applied to the owed amounts.
- 22) The bank charges resulted from reimbursing the unduly paid amounts are borne exclusively by the Project Beneficiary making the reimbursement.
- 23) Each Project Beneficiary, including the Lead Beneficiary, shall be responsible to the other Project Beneficiaries and shall pay for the damages resulted from not observing the tasks and obligations established by the present Agreement and its annexes.
- 24) Each Project Beneficiary is responsible for the damages caused to third parties from its own fault during the implementation of the project.

### **§ 8 Publicity**

- 1) The Lead Beneficiary must inform and must ensure that all Project Beneficiaries inform the public, by means of the measures laid down in Annex XII of Regulation (EU) no. 1303/2013, about the assistance obtained from the Funds.
- 2) The Lead Beneficiary and all Project Beneficiaries are responsible for the implementation of the information and publicity activities related to the non-reimbursable financial assistance received through the Programme.
- 3) The Lead Beneficiary must ensure and must satisfy itself that all Project Beneficiaries ensure transparency and accurate information to the mass media on the projects financed under the Programme.
- 4) All information and publicity actions developed by the Project Beneficiaries (including the Lead Beneficiary) must observe the Visual Identity Manual (available on the programme website: [www.interreg-rohu.eu](http://www.interreg-rohu.eu) or on request at the Joint Secretariat).
- 5) The Project Beneficiaries shall request beforehand the approval by the JS for all information and publicity measures developed under the project, in compliance with the provisions of the Visual Identity Manual.
- 6) The publications edited within a project financed under the Programme shall include the name of the project and reference to the EU co-financing of the Programme, on the first and the last cover. The publications shall also contain contacts (persons, institution/organization, phone, fax, email and postal address) for the persons interested in finding out further details. The responsibility for the content of materials belongs solely to the beneficiary. However, authorised reviews are necessary from competent institutions from both countries.
- 7) For all information and publicity actions developed by the Project Beneficiaries, the Lead Beneficiary must ensure that they archive in a single place (hard copy and/or

electronically) the documents related to these activities (e.g.: information and publicity materials they produced, as printed materials, audio-video materials).

- 8) The Lead Beneficiary is responsible to inform the Joint Secretariat regarding the information and publicity measures taken in order to promote the projects financed under ERDF.
- 9) The rules stipulated in the Visual Identity Manual are mandatory for the Lead Beneficiary and all Project Beneficiaries.
- 10) By accepting the funding, the LB and its partners give their acceptance for their inclusion in the list of projects published in accordance with Article 115(2) of Regulation (EU) no. 1303/2013.
- 11) The LB ensures the proper means of communication between the project and the Programme, including:
  - a. participation, whenever requested, in LB trainings organized by the JS;
  - b. participation, whenever requested, in other events organised by the Programme with the purpose of presenting/ discussing/ developing/ sharing project results and creating synergies with other projects and relevant organisations;
  - c. providing a visible link on the project's website to the Programme website.

## **§ 9 Confidentiality**

- 1) The Managing Authority and the Lead Beneficiary undertake to preserve the confidentiality of any document, information or other material communicated to them in confidence until at least five years from the official closure of the Programme. The release of information to persons involved in implementing/ verifying/ controlling/ auditing the project shall be performed on confidential basis and shall cover the information that is necessary for implementing the project.
- 2) The data used for publicity purposes, for informing on and promoting the use of ERDF funds, shall not be considered as having confidential status.
- 3) The Managing Authority has the right to release information regarding the project on request of public institutions, investigating the project.
- 4) The contracting party shall bare no responsibility for releasing information on the contract if:
  - a. the information was released with the written agreement of the other contracting party; or
  - b. the contracting party was legally forced to release the information.
- 5) Failing to observe the confidentiality obligation gives the damaged party the right to claim compensations from the damaging party.

## **§ 10 Conflict of interests**

- 1) In the present Contract, the conflict of interests represents any circumstances defined

as such in the national/European legislation.

2) Any conflict of interests that arises during the implementation of the contract shall be immediately notified to the JS. The MA reserves the right to verify such circumstances and take the necessary measures, where necessary.

### **§11 Irregularities or fraud. Recovery of the funding**

- 1) "Irregularity" according to the present Agreement is any failure to observe the law, regulation and compliance with the provisions of the memorandums of understanding, financing agreements regarding the Community funds and related co-financing, as well as with the provisions of the contracts concluded according to these memorandums/agreements, resulting from an action or inaction of any Beneficiary, which by an ineligible expenditure prejudices or may prejudice the general budget of the European Communities or the budgets, managed by or on behalf of the European Communities and/or the budgets granting the related co-financing.
- 2) "Fraud" according to the current contract is any intentional act or omission in connection with obtaining or using European funds and/or public funds related to these incriminated by the Criminal Code or other special laws.
- 3) The MA shall show zero tolerance to any suspected cases of fraud and shall take all necessary measures in order to prevent and correct such cases, according to the national and European legislation in force.
- 4) In case of irregularity, the MA shall impose to the Lead Beneficiary all the necessary measures for the elimination or diminishing of the consequences on the implementation of the project.
- 5) The MA may suspend or terminate the Subsidy contract in case the beneficiaries fail to take the measures imposed.
- 6) In case an irregularity is committed, the LB is responsible for reimbursing to the MA the amount affected by the irregularity, even if the irregularity was committed by one of the Project Beneficiaries.
- 7) The MA takes the decision for suspending/terminating the Subsidy contract, after verifying the reasons presented by the LB and/or JS and the related documents.
- 8) In case the Subsidy contract shall be terminated, the MA notifies the LB regarding this decision and the related financial measures. In this case, within 30 calendar days from receiving such notification, the LB and / or Project Beneficiaries shall fully return the amounts specified in the notification, including the bank charges and interests, if the case.
- 9) In case of irregularities committed after the end of the implementation period of the project, during the whole sustainability period, the Lead Beneficiary has the obligation, in 30 calendar days from the receipt of the notification from the MA, to reimburse the amounts unduly paid including the bank charges, and interests, if the case.
- 10) For the irregularities committed by a Project Beneficiary, the LB is entitled to request these amounts from the responsible Project Beneficiary in order to be repaid to the MA. In specific cases, for irregularities discovered after payment of the final



reimbursement claim, the partners may repay the due amounts directly to the MA, notifying the LB about this option.

- 11) If the Lead Beneficiary does not manage to recover the unduly paid ERDF contribution from the Project Beneficiaries, it will inform the MA and will send all necessary documents for the MA to be able to take all necessary measures stipulated by the legislation in force.
- 12) Any over payment, including those resulting from deviations from the initially estimated amounts, as in the case of expenditures calculated on flat or maximum rates basis done by the MA is considered unduly paid amount, and the LB has to repay the respective amounts within 30 calendar days as of the receiving date of the notification from the MA.
- 13) In case the irregularity is discovered before the final payment, the MA is entitled to diminish the reimbursed amount starting with the next payment until the total recovery of the debt, to which the bank charges are added.
- 14) In case, before the final payment, the MA determines that project indicators/objectives were not fulfilled/were partially fulfilled, proportional financial deductions shall be applied, according to relevant legal provisions and the provisions of the Project Implementation Manual.
- 15) In case the irregularity resulting in an unduly paid amount is discovered after the final payment or the debt was not entirely recovered, the MA shall notify the LB regarding the unduly paid amount, and the LB has the obligation to return, within 30 calendar days as of the receiving date of the notification, the amount, including bank charges.
- 16) In case the project contribution to indicators is lower compared to the application form, the MA is entitled to decommit project funds by reducing the original project budget and the corresponding ERDF contribution, as follows:
  - a) 10% decommitment will apply to the budget of the beneficiaries in case the project indicators were reached lower than 75% of the initial project indicators (average at project level considering all indicators)
  - b) 25% decommitment will apply to the budget of the beneficiaries in case the project indicators were reached lower than 50% of the initial project indicators (average at project level, considering all indicators).
- 17) The final payment will be made only after the recovery of any known debts from the Lead Beneficiary and/or any other partner of the project.
- 18) In duly justified cases and based on a statement given by the LB in which he takes the responsibility to transfer the debt amount to the MA in 5 calendar days from the date the final payment is paid by MA, the MA can transfer the amounts related to the final reimbursement claim.
- 19) Starting with the 31<sup>st</sup> day as of the expiry of the deadlines stipulated at paragraphs 8, 9, 12, 15 an interest rate 1.5% higher than the rate applied by the European Central Bank as in force on the first working day from the month of the deadline date shall be applied to the owed amounts.
- 20) In case financial corrections are applied by the European Commission to the



Programme with regard to the performance framework, according to Article 22 of Regulation (EU) No. 1303/2013, and based on the provisions of Commission Implementing Regulation (EU) No 215/2014, the Managing Authority may decide to cover the financial correction from the projects' budgets which have not achieved their indicators.

- 21) In case of observations and/or reservations raised by the Commission on the description of the Management and Control System of the Programme or in case of a system error detected, the MA has the right to temporarily withhold payments to a particular partner (LB or PB) or the project as a whole. Payment suspension(s) shall be lifted as soon as observations and/or reservations raised by the Commission have been withdrawn and the MA has received sufficient evidence on the solution of the systemic error(s) detected.

### **§ 12 Disputes between beneficiaries**

- 1) Should any dispute arise between Lead Beneficiary and/or any other Project Beneficiary, amiable conciliation shall be attempted. In case no amiable solution can be reached, the Lead Beneficiary and/or any other Project Beneficiary shall be obliged to request and accept arbitration carried out by an ad-hoc arbitration court. This will consist of two people of both nationalities, appointed by mutual agreement of the partners, from a list of persons nominated beforehand. Should the project partners fail to designate all the expert arbitrators within one month from the Lead Beneficiary's request, the Lead Beneficiary shall have the authority to appoint both expert arbitrators.
- 2) Lead Beneficiary and/or any other Project Beneficiary of the project shall be obliged to accept and apply the decisions of the arbitration court, subject to the applicable law hereby agreed upon and in compliance with the provisions of the Community law.
- 3) Any dispute that, from any reason, fails to be solved by the arbitration court and which involves the Lead Beneficiary shall be governed by the law applicable to the Lead Beneficiary, while, if the Lead Beneficiary does not take part in the dispute, the applicable law is the one of the petitioner.

### **§ 13 Audit, control and evaluation of the project**

- 1) The responsible auditing bodies of the EU and the two partner states and, within their responsibility, the Audit Authority from Romania and the group of auditors as well as the MA are entitled to audit the proper use of funds by the LB or PBs or arrange for such an audit to be carried out by authorized persons.
- 2) A first level control system has been established both in Romania and Hungary in order to check the expenditure made by the Project Beneficiaries from each country. Therefore, each partner has the obligation to ensure that its expenditures are checked and validated by a controller from the state on whose territory it is located, before the reimbursement claim is submitted.
- 3) The MA is entitled to verify and to control the proper use of funds by the LB or PBs. The verifications to be carried out by the Managing Authority shall cover

administrative, financial, technical and physical aspects of project, as appropriate. The MA shall be responsible for the control of the proper use of funds by the LB or by its Project Beneficiaries, in particular through preventing, detecting and correcting irregularities and recovering amounts unduly paid together with interest on late payments where appropriate.

- 4) The LB will provide all documents required for the audit, control or evaluation, provide necessary information and give access to its business premises. The LB and PBs are at all times obliged to retain for audit and control purposes all files, documents and data about the project for a period of three years after the official closure of the Interreg V-A Romania-Hungary Programme. The documents must be properly archived. Also, the MA must be informed on the location of these documents.
- 5) The LB must have separate accounts for the project, according to the national legislation.
- 6) The LB is obliged to guarantee that both the LB and all of the PBs fulfil the duties stipulated above.
- 7) The LB and PBs must observe the recommendations received after an audit, control, otherwise the MA has the right to terminate the Subsidy contract.

#### **§ 14 Assignment, legal succession**

- 1) The Lead Beneficiary and/or any other Project Beneficiary cannot renounce totally or partially the rights and obligations resulted from the present Partnership Agreement unless it has the clear agreement of all beneficiaries participating in the project.
- 2) In case of legal succession, e.g. where the LB and/or any other Project Beneficiary changes its legal form, the LB and/or any other Project Beneficiary is obliged to transfer all duties under this Agreement to the legal successor. The LB and/or any other Project Beneficiary shall notify the MA about any change with 15 working days beforehand.

#### **§ 15 Amendment of the Agreement**

- 1) Any modification to the present Agreement is made only with the agreement of all parties and takes the form of an addendum to the present Agreement.
- 2) As an exception from the provisions of paragraph 1, the LB/PB may make the following changes, with the timely notification of the other Project Beneficiaries:
  - i. change of headquarter may be done and shall be forwarded to the MA within 15 calendar days following the change of address;
  - ii. material errors in the text of the Agreement notified to the MA immediately upon correction.
- 3) Addenda enter into force the next day after their signing by the last party, except the case when the addendum confirms modifications occurred in the national/European applicable legislation with impact on the implementation of the present Agreement,

modifications that become effective from the date the respective legal acts enter into force.

### **§ 16 Working language**

- 1) The working language shall be English.
- 2) Any official internal document of the project shall be made available in the language of the Subsidy contract.

### **§ 17 Termination of the Agreement**

- 1) In exceptional and duly justified cases, including “force majeure”, the Lead Beneficiary may decide on terminating the Partnership Agreement, by a written notification, the obligations the parties have towards the MA remaining valid until the MA or the Monitoring Committee decide to terminate the Subsidy contract.
- 2) The termination of the Subsidy contract is possible only with prior approval of the MA or of the Monitoring Committee, as the case may be. In such case the Partnership Agreement will be also terminated.
- 3) The Partnership Agreement may be terminated by the decision of the LB, in whole or in part, without any other delay or formality and the Project Beneficiary is obliged to repay to the Lead Beneficiary the amounts already received, in the following cases:
  - a. an inconstancy between the reality and the declarations of the beneficiary in the Application Form is found, regarding the financing of the project from national or European public funds, or regarding the financing from other national or European programmes;
  - b. the subsidy awarded has been partially or entirely misapplied for other purposes than those agreed upon, including 5 years after the financial closure of the project;
  - c. insolvency proceedings are instituted against the assets of a beneficiary or insolvency proceedings are dismissed due to lack of assets for cost recovery, provided that this appears to prevent or risk the implementation of the project;
  - d. a Project Beneficiary closes down;
  - e. in case of projects comprising investment in infrastructure or productive investment, the MA finds that during the implementation period of the project including 5 years after the financial closure of the project, the LB or any Project Beneficiary are subject to any of the following:
    - a cessation or relocation of a productive activity outside the programme area;
    - a change in ownership of an item of infrastructure which gives to a firm or public body an undue advantage;
    - a substantial change affecting its nature, objectives or implementation

conditions which would result in undermining its original objectives.

- f. the PB fails to observe the provisions of article 7 part B paragraph (13) of the present Agreement;
  - g. in case the project is no longer eligible, if during its implementation such modifications appear that affect the implementation conditions/ create for a third party an unjustified advantage, or if the modification is the result of a change in the nature of the property/ ceasing/ change of the location of the investment;
  - h. a Project Beneficiary did not notify the Lead Beneficiary in due time on a case of conflict of interests or the necessary measures for ending such a situation were not taken;
  - i. the Project Beneficiary did not start the implementation of the project according to the provisions of the approved Application Form.
- 4) The LB, has the right to terminate this Agreement, with a previous conciliation procedure and to demand repayment of the amounts already paid, if:
- a. the project has not been or cannot be fully implemented by carrying out the planned activities, the planned outputs and results or the project cannot or could not be realized in due time;
  - b. the Project Beneficiary has failed to submit in the deadlines the required reports or proofs, or to supply necessary information, in the deadline and has not duly justified these delays;
  - c. the Project Beneficiary has impeded or prevented the auditing, or the recommendations resulted from the audit missions have not been observed;
  - d. a fraud is discovered at Project Beneficiary level;
  - e. the Project Beneficiary has failed to fulfil any other conditions or requirements stipulated in this Agreement.
- 5) Any breach of the provisions of the present Agreement may result in the termination of the present Agreement and in decommitment of financing and repayment of amounts unduly paid.

### **§ 18 Force majeure**

- 1) Force majeure is any external event, which cannot be foreseen, unavoidable and absolutely invincible.
- 2) Force majeure exonerate the parties of their obligations/part of their obligations affected by the force majeure.
- 3) If a party is or will be prevented from performing any of its obligations under the Partnership Agreement by Force Majeure, then it shall give notice to the other party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given

within 5 calendar days after the party became aware, (or should have become aware), of the relevant event or circumstance constituting Force Majeure. The responsible party will support all related costs (if any) if the notification procedure is not observed.

- 4) The responsible party will support all related costs (if any) if the notification procedure is not observed.
- 5) The execution of the Partnership Agreement is suspended during the period of “force majeure”, for the period the event exists.
- 6) In case the Partnership Agreement must be suspended from this reason on a period longer than three months, the MA has the right to decide on the continuation/modification/termination of the Partnership Agreement, as it is an annex to the Subsidy contract.
- 7) Fortuitous event does not exonerate the parties in case of failure to execute totally or partially the obligations under this Agreement.

### **§ 19 Correspondence**

- 1) The correspondence for the present Agreement shall be submitted to the following addresses:
  - Lead Beneficiary.....
  - Project Beneficiary 2.....
  - Project Beneficiary 3.....
- 2) The reports and reimbursement claims, and any other official document submitted for the implementation of the project must be signed by the legal representative of the Project Beneficiary or by its mandate.
- 3) The entire correspondence regarding the present Agreement shall be done in written form, by mentioning the title of the project, the project code and shall have a registration number (entry and exit).

### **§ 20 Applicable law**

- 1) The parties undertake to comply in good faith with all and every provision hereof according to the binding value of the Agreement entered into by the parties.
- 2) The Agreement is governed by the law of the country of the Lead Beneficiary.

### **§ 21 Final provisions**

- 1) The present Agreement is concluded in ... copies. Each copy must be countersigned by the Lead Beneficiary and every Project Beneficiary.
- 2) The following annexes shall be deemed to form and be read and construed as part of this Agreement:

Annex 1: Budget of the project

Annex 2: Schedule for spending forecast and reimbursement claims

Annex 3: Approved Application Form

- 3) The Agreement and its annexes are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:
- a) Partnership Agreement
  - b) Any subsequent amendments of the Agreement and its annexes made in accordance with the provisions of Article 15.

**Lead Beneficiary**

**Legal representative:**

**Name:**

**Signature**

**Date**

**Project Beneficiary 2**

**Legal representative:**

**Name:**

**Signature**

**Date**

**Project Beneficiary 3**

**Legal representative:**

**Name:**

**Signature:**

**Date:**