

eMS Code.....

**Subsidy contract**

**from ERDF**

**No...../.....**

**INDICATIVE TEMPLATE**

**The following Subsidy contract between**

Ministry of Regional Development and Public Administration

17 Apolodor Street, Bucharest, Romania, tax registration no.:.....

acting as Managing Authority for the Interreg V-A Romania-Hungary Programme,  
hereinafter referred to as MA,

represented by

....., Minister of Regional Development and Public Administration

and

..... [Name and address, fiscal registration number],

represented by .....

hereinafter referred to as Lead Beneficiary (LB)

is concluded on the basis of the approved application no. <e-MS code>, having as legal basis:

- 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;
- 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 and repealing Council Regulation (EC, Euratom) No 1605/2002;

- 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;
- Commission Delegated Regulation (EU) No. 481/2014 of 4 March 2014 supplementing 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;
- Government Ordinance No. 29/2015 on the management and use of external grant and national public co-financing for European Territorial Cooperation Objective, for the 2014-2020 period, and its Implementing rules;
- Interreg V-A Romania-Hungary Programme, approved by the European Commission by 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 and Public Administration 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.

### **§ 1 Object**

- 1) The object of this contract is the award of ERDF financing by the MA for the implementation of the **Full Application - phase II** - implementation of ..... [index and title of the project], herein referred to as "project", according to the decision of the Monitoring Committee no..... on ..... [date] in ..... [place].
- 2) The LB receives funding on the basis of the provisions of the present contract and its annexes, which the LB declares to know and accept.
- 3) The LB accepts the funding and shall coordinate the implementation of the project in due time according to the provisions of the present contract and of the national and European legislation.

### **§ 2 Duration of the contract**

- 1) The Subsidy contract becomes effective on the date the last party signs it. The last party signing has the obligation to note the date.

- 2) The implementation of the project starts on .....(dd/mm/yyyy).
- 3) The implementation period of the project is of ..... [maximum 42 - x months of CN implementation period] months.
- 4) The Subsidy contract ends in 5 years from the financial closure of the project.
- 5) The submission of the last reimbursement claim cannot exceed 6 months from the finalisation of the implementation of the project.

### **§ 3 Budget of the project**

- 1) The total eligible value is ..... EUR <amount in figures> (non-refundable financing and the contribution of the partner), out of which:
  - a) <amount in figures> EUR ERDF, representing XX%
  - b) <amount in figures> EUR State Budgets Co-financing, representing XX % [depends on the state of residence]
  - c) <amount in figures> EUR Partners own contribution, representing XX %
- 2) Any ineligible expenditure shall be supported by the LB and Project Beneficiaries, apart from the approved budget.

### **§ 4 Value of the contract**

- 1) The value of the present contract is .....EUR <amount in figures> / .....<amount in letters>, representing the maximum total ERDF eligible value of the project according to Annex 1 - Budget of the project; MA commits itself to transfer these funds, representing .....% of the total eligible value of the project, to the LB.
- 2) The funding will be paid on the basis of the reported eligible expenditure. MA will make the transfer of ERDF in the limit of the existent balance at the date of reimbursement claim, and in case of insufficient funds, payment process is suspended until and if the European Commission credits the programme's account with the amounts representing the ERDF funds.
- 3) If the European Commission takes the decision of interrupting or totally suspending the funds, the Managing Authority may terminate the contract.
- 4) In case of observations and/or reservations raised by the Commission on the description of the Management and Control System of the Interreg V-A Romania-Hungary Programme or in case of a system error detected, the MA has the right to temporarily withhold payments to a particular beneficiary (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.
- 5) The Lead Beneficiary commits itself to support its own contribution and the non-eligible expenditures as well as to ensure the temporary availability of funds for the proper implementation of the project until they are reimbursed by the MA.
- 6) In the case of net revenue generating projects, the MA shall recover the amounts according to the proportionality principle and observing the provisions of Regulation (EU) No. 1303/2013.

### **§ 5 Eligible Expenditures**

- 1) The starting date for the eligibility of expenditure is the first day after approval of the project by the Monitoring Committee. Expenditures for the operation must be paid out

at the latest within 30 calendar days after the implementation period. Expenditures committed and incurred after the finalization of the implementation period shall not be eligible.

2) Expenditure is incurred when the activity that has generated the expenditure (for example the works executed in accordance with the conditions of the contract) has been completed or the services foreseen in a contract have been provided and accepted by the beneficiaries. Proof of expenditures incurred relates to supporting documents indicating the completion of the activity, for instance take over certificates or confirmation of service delivery.

3) The expenditures related to the project are eligible provided that they observe the applicable European and national legislation in force, they are stipulated in Annex 1 - Budget of the project and provided that they observe the rules set at Programme level and the terms and conditions stipulated in the present contract. The Programme rules are available on Programmes website, [www.interreg-rohu.eu](http://www.interreg-rohu.eu).

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

- 1) The LB shall submit progress reports to the JS every 4 months. The instructions presented in the reporting models must be followed exactly. All reports must be submitted in English.
- 2) In case the LB does not present the expenditures incurred in a progress report, it is mandatory for the LB to present the expenditures previously omitted in the next progress report, under penalty of forfeiture of the right to seek reimbursement for the costs in question.
- 3) The LB must send to the JS via the electronic system the reimbursement claims and all supporting documents, according to the spending forecast annexed to the Partnership Agreement, in compliance to paragraph 1 and based on the conditions provided hereunder, in the Project Implementation Manual and in the applicable legislation.
- 4) Even if no expenditure was incurred, the progress report shall be submitted in due time to the JS.
- 5) The Reimbursement claim 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.
- 6) The LB must present all documents to the controllers and make sure that all Project Beneficiaries present their documents, in order to be verified before drafting and forwarding the reimbursement claims.
- 7) The funds are reimbursed only in Euro and will be transferred into a special bank account opened exclusively for the project, indicated by the LB. The expenditures resulted from the exchange rate risk are non-eligible expenditures for the project. The exchange rate risk is borne by the beneficiary concerned.
- 8) 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. 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.
- 9) The spending forecast of the project is set out in Annex 3 to the present contract.
- 10) The LB has the possibility to deviate from the spending forecasts and submit reimbursement claims to the MA at any given time for one or more beneficiaries, provided that the reimbursement claim is not lower than 10.000 euro ERDF.

- 11) A reimbursement claim shall be submitted at least for every reporting period of 4 months, according to Article 6, paragraph 1.
- 12) In case of underspending compared to the spending forecast, the MA, at the half of the implementation period, is entitled to decommit the project by reducing the original project budget and the corresponding ERDF contribution, as follows:
  - a) In case of beneficiaries having a financial execution lower than 75% as compared to the initially estimated spending forecast, a decommitment of 10% shall apply to the budget of the beneficiaries who have not respected their schedule of reimbursement;
  - b) In case of beneficiaries having a financial execution lower than 50% as compared to the initially estimated spending forecast, a decommitment of 25% shall apply to the budget of the beneficiaries who have not respected their schedule of reimbursement.
- 13) In case of a decision on the decommitment of the project, 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 contract in case of decommitment at project level shall take the form of a decision of the representative of the Managing Authority signing the contract which will be notified to the Lead Beneficiary and which becomes part of the contract.
- 14) 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.
- 15) In case of decommitment, the Lead Beneficiary together with the Project Beneficiaries may decide to give up financing, and properly notify the MA within two weeks following the receipt of MA's notification. In this case, the LB has the obligation to repay to the MA all the funds received.
- 16) 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 observing the deadlines may result in not reimbursing the amounts.

## **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 its 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 present contract, of the application form approved by the Monitoring Committee and its annexes, of the Partnership Agreement (annexed to the present contract), of the Project Implementation Manual 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 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 correct implementation of the project have been obtained.

- 4) The LB laid down the arrangements for its relations with the beneficiaries participating in the project in the Partnership Agreement (Annex 3 to the present contract) comprising, inter alia, provisions guaranteeing the sound management of the funds allocated to the project, including the arrangements for recovering amounts unduly paid.
- 5) 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 Beneficiaries participating in the project has been incurred in implementing the project and corresponds to the activities agreed between the beneficiaries, and is in accordance with the provisions of the Subsidy contract;
  - c) inform the JS/MA, according to the provisions of the Project Implementation Manual, 10 working days before the date the LB or the Project Beneficiaries intend 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 1000 euro;
  - d) 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 in wholly or in part;
  - e) comply with the regulations referred to in the preamble to this contract as well as with relevant national and European legislation;
  - f) guarantee that itself and all Project Beneficiaries drafting the Technical Project / Detailed Design, will do the utmost to obtain the necessary approvals, agreements and construction permits within 9 months from the signature of Subsidy contract;
  - g) know and observe the provisions of the Guide for Applicants for Flagship Projects, paying special attention to the limitations (value, percentage, duration etc) referred to therein and of the Project Implementation Manual (published on the programme website [www.interreg-rohu.eu](http://www.interreg-rohu.eu));
  - h) observe and make sure that all Project Beneficiaries observe the national and European legislation on state aid, equal opportunities, non-discrimination, national integrity, sustainable development, environmental protection;
  - i) make and satisfy itself that all Project Beneficiaries make all expenditure according to the national laws on public procurement of the country on whose territory the beneficiary is located. The Romanian beneficiaries which are not stipulated as Contracting authority in the respective laws or in special laws regarding procurement should follow at least the general principles stated in the Programme' rules on eligibility of expenditure;
  - j) ensure that all Project Beneficiaries select the final beneficiaries of the projects (target groups) by a transparent procedure;
  - k) present and to ensure that the Project Beneficiaries present their expenditures to the controllers for verification in 15 working days after the reporting period ended, except for 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;
  - l) ensure that all Project Beneficiaries submit their contributions to the reimbursement claim at least 10 calendar days before the deadline for submitting the reimbursement claim to the JS;

- m) ensure that all Project Beneficiaries have a proper analytical accounting system; the accounting system must be in line with the national legislation;
  - n) observe and make sure that all Project Beneficiaries observe the provisions from the Visual Identity Manual (published on the programme website [www.interreg-rohu.eu](http://www.interreg-rohu.eu)).
  - o) provide the evaluators carrying out the Programme evaluation and ex-post evaluation of the Programme according to Articles 55, 56 and 57 of Regulation (EU) No 1303/2013 with any document or information necessary to assist the evaluation.
- 6) The LB ensures that the controllers have verified and validated the expenditure presented by the beneficiaries participating in the project.
  - 7) The reimbursement claim and the progress report contain information consolidated by the LB, at project level; thus, the LB presents consolidated reimbursement claims and consolidated progress reports, being responsible for collecting documents and information from every Project Beneficiary.
  - 8) LB is liable towards the MA for ensuring that all of its partners have a legal status, that they have the capacity to manage the project, that they observe the provisions from the Guide for Applicants for Flagship Projects and the Project Implementation Manual. Moreover the LB is liable towards the MA for ensuring that its partners fulfil their obligations under this contract. The LB is also liable towards the MA for all irregularities, even those committed by the Project Beneficiaries.
  - 9) 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. In case such request refers to additional implementation reports, the LB is responsible for gathering the information from all partners in due time.
  - 10) The LB takes full responsibility for the damages caused to third parties from its own fault during the implementation of the project. MA has no responsibility for the damages caused to third parties as a result of executing the contract.
  - 11) The LB and Project Beneficiaries must not receive or have received money from other programmes for the project concerned.
  - 12) 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 exist before the contract, shall represent the property of the LB and its partners, as the case may be.
  - 13) The LB cannot mortgage or impose any other form of financial or legal burden / bank guarantee on the infrastructure invested in / goods purchased from the financing throughout the implementation period of the project and 5 years after the financial closure of the project.
  - 14) In case of projects comprising investment in infrastructure or productive investment, the Lead Beneficiary shall reimburse the MA the amounts received according to art. 71 of Regulation (EU) no. 1303/2013 if within 5 years of 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.
  - 15) The Lead Beneficiary understands and agrees that the MA may delegate tasks to the JS, according to the Framework Agreement regarding the delegation of responsibilities

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.

- 16) 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 beneficiary 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 representative of MA signing the contract, the suspension of the contract starting with the date indicated by the beneficiary. 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 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.
- 17) 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.
- 18) If the MA demands repayment of the ERDF in accordance with this contract, the LB is liable to the MA for the total ERDF that has been reimbursed.
- 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 (JS, within Oradea Regional Office for Cross-Border Cooperation on Romanian-Hungarian Border , Romania), MA, Certifying Authority (CA, within the Romanian Ministry of Regional Development and Public Administration), Audit Authority (AA, 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 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) In case of remaining funds/economies, the LB must notify the MA within 15 days following the finalization of implementation of the public procurement contracts at project level.
- 21) The LB must clearly specify in the notification the amounts of the remaining funds and if there is a need of re-using these within the project.
- 22) The LB and its partners must ensure the sustainability of the project results and, after the project's implementation period has ended, the following 5 years the LB has the obligation to submit annually a sustainability report.
- 23) The LB must implement the recommendations received after an audit control, otherwise the MA has the right to terminate the contract. The LB ensures that the project beneficiaries fulfill this obligation.

## **B. Managing Authority**

- 1) The MA shall make available the information regarding the official closure date of the Programme to the LB within 5 working days from the date of the receipt of the Commission's official notification in this respect.



- 2) The MA has the right to decide on the eligibility of expenditure related to the reimbursement claims.
- 3) The MA has the obligation to support the LB by providing necessary information and clarifications for the implementation of the project.
- 4) The MA has the obligation to reply to any written request from the LB in maximum 30 calendar days from the date the MA receives the request.
- 5) The MA ensures the technical and financial monitoring of the project.
- 6) The MA shall authorize all eligible expenditures related to the reimbursement claims submitted by the LB.
- 7) The MA has the obligation to inform the LB regarding the reports, conclusions and recommendations made by the European Commission or Audit Authority that may affect the implementation of the present contract.
- 8) Additional obligatory deadlines to submit a reimbursement claim may be set by the MA in order to avoid decommitment of ERDF contribution at programme level. The additional deadlines shall be communicated at least 2 months in advance to the LB.
- 9) In case one of the obligations of the Lead Beneficiary/Beneficiary is not fulfilled, the MA may suspend the execution of the contract.
- 10) In case of suspending the contract, the MA shall notify the Lead Beneficiary regarding this decision, duration of the suspension period, the proposed corrective measures and also the related financial measures. The MA shall also notify the Lead Beneficiary if the suspension period is cancelled prior to the initially set deadline.
- 11) Subject to availability of funds, the Managing Authority shall pay the total amount of eligible public expenditure due no later than 90 calendar days from the date of submission of the reimbursement claim by the Lead Beneficiary.
- 12) The payment deadline mentioned in paragraph 11 may be interrupted by the Managing Authority in either of the following duly justified cases:
  - a) the amount of the reimbursement claim is not due or the appropriate supporting documents have not been provided;
  - b) an investigation has been initiated in relation to a possible irregularity affecting the expenditure concerned.
- 13) For the purpose of Article 7, letter A, paragraph 18, the Managing Authority shall inform the Lead Beneficiary on the date of the official closure of the Interreg V-A Romania-Hungary Programme.
- 14) The Managing Authority has the right to modify the provisions of the contract unilaterally through instructions, which shall be communicated to the Beneficiaries and posted on the Programme's website, [www.interreg-rohu.eu](http://www.interreg-rohu.eu). The instructions shall become part of the contract. These modifications become effective from the date of communication.
- 15) The MA is entitled to publish data regarding the project in accordance with Article 115(2) of Regulation (EU) no. 1303/2013.
- 16) The Managing Authority may decommit/use the remaining funds following the finalization of public procurement procedures and/or public procurement contracts at project level.
- 17) In case that during project implementation or during up to 5 years after the financial closure of the project<sup>[1]</sup>, illegal state-aid incidence is discovered, the MA may apply a correction up to 100% for the respective project, and the amounts paid to the beneficiaries

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<sup>[1]</sup> The date of the last financial transfer at project level;

shall be recovered in whole or in part, by the Managing Authority, together with interest calculated depending on the amounts involved and the time period in which they were available to beneficiaries, and adding penalties and debts from the date of grant award to the date of recovery.

### **§ 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 is responsible for the implementation of the information and publicity activities related to the non-refundable 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 Interreg V-A Romania-Hungary Programme.
- 4) All information and publicity actions developed by the 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, upon 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 Interreg V-A Romania-Hungary 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 (eg: information and publicity materials they produced: 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 the Programme
- 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 beneficiaries 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 Lead Beneficiary shall ensure 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.
- 2) As an exception from the rules provided in the previous paragraph, 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) Releasing any information to persons involved in implementing / verifying / controlling / auditing the project shall be performed on confidential basis and shall only cover the information that is necessary for implementing the project.
- 4) The Managing Authority has the right to release information regarding the project, requested by public institutions investigating the project.
- 5) 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.
- 6) 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 current Contract 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) 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 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) MA may suspend or terminate the 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 contract, after verifying the reasons presented by the LB and/or JS and the related documents.
- 8) If before the end date of the suspension period of the contract execution, the Lead Beneficiary or/and Project Beneficiaries fulfils the corrective measures established by the MA and also of his financial corrections, the MA notifies JS and the beneficiaries regarding the restarting of contract execution, mentioning the date from which this starts.
- 9) If, until the expiration of the suspension period, the Lead Beneficiary or/and Project Beneficiaries does not fulfil the corrective or financial measures established by MA, MA decides the termination of the contract.
- 10) In case the contract shall be terminated, the MA notifies the LB regarding this decision and the related financial measures. In this case, the MA will request that within 30 calendar days as of the receipt of the notification, the LB shall return the amounts that the notification refers to, including the bank charges, and interests, if the case.
- 11) 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.
- 12) For the irregularities committed by a Project Beneficiary, the LB is entitled to request these amounts from the responsible Project Beneficiary in order to pay them to the MA. In specific cases, for irregularities discovered after payment of the final reimbursement claim, the beneficiaries may repay the due amounts directly to the MA, notifying the LB about this option.
- 13) 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 for recovery of the respective amounts according to the provisions of Mol and relevant legislation in force.
- 14) In case the MA does not succeed in securing repayment from the Lead Beneficiary, the Member State on whose territory the beneficiary concerned is located shall reimburse the Managing Authority the amount unduly paid to that beneficiary, according to the provisions of the Mol relevant legislation in force.
- 15) Any extra payment, 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.
- 16) In case the irregularity is discovered before the final payment, the MA may decide on reducing of the reimbursed amount starting with the next payment until the total recovery of the debt, to which the bank charges are added.
- 17) 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.
- 18) 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.
- 19) 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).
- 20) Starting with the 31st day as of the expiry of the deadlines stipulated at paragraphs 10, 11, 14 or 17 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.
- 21) 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, then the Managing Authority may decide to cover the financial correction from the projects' budgets which have not achieved their indicators.
- 22) The LB shall pay the bank charges resulted from the reimbursing of the amounts to the MA.

## **§ 12 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 by Project Beneficiaries 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 by Project Beneficiaries. 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 partner 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 Project Beneficiaries 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 from 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 Project Beneficiaries fulfil the duties stipulated above.
- 7) The LB and Project Beneficiaries must observe the recommendations received after an audit control, otherwise the MA has the right to terminate the contract.

### **§ 13 Assignment, legal succession**

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

### **§ 14 Amendment**

- 1) Any request for modification of the Subsidy contract has to be justified and submitted by the LB to the Joint Secretariat in a written form, as regulated in the Programme's Implementation Manual. The Joint Secretariat will analyze the request and may request additional information from LB, and after clarifications (if the case) submits the request of modification for approval to the Managing Authority or the Monitoring Committee according to the type of the modification requested. The Addendum to the Subsidy contract has to be signed by both parties according to the approval of the Managing Authority /Monitoring Committee.

The Managing Authority/Monitoring Committee has the right to refuse the proposed modifications by the partner (or part of them) for which justification was not provided and which were not considered acceptable. In case the proposed modification was refused by the Managing Authority, it cannot be requested again.

- 2) The LB has to request the modification of the Subsidy contract by addendum in the following cases:
  - a) changes in the partnership;
  - b) substantial changes in the content of the project;
  - c) budget reallocation between Project Beneficiaries;
  - d) budgetary reallocations between the budgetary lines;
  - e) extension of the implementation period.
- 3) Further detailed rules describing each case of Subsidy contract modification are set in the Project Implementation Manual, available on the Programme's website [www.interreg-rohu.eu](http://www.interreg-rohu.eu).
- 4) The parties have the obligation to inform on the initiation to amend the present contract with minimum 30 calendar days before the addendum is intended to produce its effects.
- 5) The last request for modification of the Subsidy contract should be submitted no later than two months before the end date of the project.
- 6) As an exception from the provisions of paragraphs 1 and 2 of the present article, other changes in the project will not require Subsidy contract modification by addendum, but the LB has to notify the Joint Secretariat in a written form in each case at the moment when the changes occur. The JS will verify that the project change does not fall under cases regulated in paragraph 2 and will inform the LB without any delay if it requires Subsidy contract modification by addendum.
- 7) The Lead Beneficiary can submit only two Addenda to extend the implementation period, case in which the approval of the Managing Authority/ Monitoring Committee is needed. The MA's approval is needed for extending the project implementation period with up to 3 months, while periods exceeding 3 months need the MC's approval. In exceptional and duly justified cases the MA may accept additional addenda.

8) Addenda become effective in the day of their signing by the last party. Modifications incurred in the respective national/European applicable legislation with impact on the implementation of the contract, become effective from the date the respective legal act enters into force without being confirmed through addenda.

9) Data, including scanned documents, introduced/uploaded into eMS is binding for all Beneficiaries. Beneficiaries will not appeal against the data and documents that they have introduced in the eMS for the project concerned.

### **§ 15 Termination**

1) Any breach of the provisions of the present contract may result in the termination of the present contract and in the recovery of the financing, including any interest and/or related bank charges.

2) The MA is entitled to terminate this contract, in whole or in part, without any other formality, and to demand repayment of the already paid amounts, if:

- a) The MA finds an inconsistency between the reality and the declarations of the LB in the application form, regarding the financing of the project from national or European public funds, or regarding the financing from other national or European Programmes; or
- b) The MA or audit bodies find that the subsidy awarded has been partially or entirely misapplied for purposes other than those agreed upon herein, including 5 years after the final payment; or
- c) the LB closes down; or
- d) 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 partner wholly or partly sells or transfer in any form the right of property of the infrastructure invested in / goods purchased from the financing, including under the conditions of article 71 from Regulation 1303/2013 (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 a public body an undue advantage or a substantial change affecting its nature, objectives or implementation conditions which would result in undermining the original objectives); or
- e) The MA decides that the project is ineligible, if during its implementation, including 5 years after the financial closure modifications appear that affect the implementation conditions/ create for a third party an unjustified advantage, and the modification is the result of a change in the nature of the property/ ceasing/ change of the location of the project; or
- f) The MA finds that, during the implementation period of the project, including 5 years after the financial closure, the LB or any Project Beneficiary wholly or partly sells the project/results of the project/intellectual or industrial property rights drawn from the project/goods purchased from the financing granted herein to a third party; or
- g) The MA finds that the LB failed to notify the MA in the deadline on a case of conflict of interests or the necessary measures for ending such a situation were not taken; or
- h) The MA finds that the Lead Beneficiary made false declarations regarding the VAT eligibility and state aid, or any other false declarations.

3) The MA is entitled to terminate this contract, with a previous conciliation procedure, and to demand repayment of the amounts already paid amounts 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; or
- b) the LB has failed to submit within the deadlines required reports or proofs, or to supply necessary information, within the set deadline and has not justified these delays; or
  - c) the LB or the Project Beneficiaries has/have impeded or prevented the auditing or control; or the recommendations resulted from the audit missions are not observed; or
  - d) a fraud is discovered at the LB/Project Beneficiary level; or
  - e) the LB has failed to fulfil any other conditions or requirements stipulated in this contract; or
  - f) the LB repeatedly fails to submit Progress reports and Reimbursement claims within the reporting deadlines; or
  - g) the LB fails to provide immediate information about circumstances that delay, hinder or make impossible the realization of the project, as well as about any circumstances that trigger a change of the reimbursement conditions and frameworks as laid down in this contract or which entitle the Managing Authority to reduce or demand repayment of the ERDF contribution wholly or in part.
- 4) In case the European Commission takes the decision of interrupting or totally suspending the funds, the Managing Authority may terminate the contract.
- 5) If the MA exercises its right of termination, the LB is obliged to transfer the reimbursed amounts to the MA. The amounts are due within 30 calendar days following the date of the letter by which the MA asserts the repayment claim; the due date will be stated explicitly in the order for recovery. In case of non-payment at the due date, penalties bigger with one and a half point than the rate applied by the Central European Bank from the first working day from the month of the deadline date shall be applied to the owed amounts. These penalties will not be supported from the contract value (they are ineligible expenditure).
- 6) If any of the circumstances stipulated at paragraph 3 or 4 appear before the entire amount of the subsidy is paid to the Lead Beneficiary, the payments will cease and there will be no requests from the Lead Beneficiary for the reimbursement of the remaining amount.
- 7) In case of decommitment according to art. 6(15), after the receipt of the notification form the LB, the MA shall proceed to the termination of the contract and recovery of all amounts paid as reimbursed.
- 8) For all cases of contract termination as mentioned within the present contract, the Lead Beneficiary is legally late.

## **§ 16 Force majeure**

1) Force majeure is any external event, unforeseeable, absolutely invincible and inevitable occurred after the conclusion of this Subsidy contract and which prevents the execution of all or part of this contract. Force majeure, established under the law, exonerates the parties in case of failure to execute totally or partially the obligations under this Contract, as long as the force majeure is in force, and only if the other party has been duly notified. It is not considered force majeure an event similar to those above which, without creating an impossibility of execution, makes extremely expensive the fulfilment of the obligations of one of the parties. The party invoking force majeure shall notify the other party regarding the force majeure event, within 5 calendar days from the date of issue of the force majeure. The party invoking force majeure is required to send to the other party,



the document stating the existence of force majeure, within 15 calendar days from the date of its communication by the competent entity. The party invoking force majeure has the obligation to communicate the date of termination of the force majeure, within 5 calendar days of the termination.

- 2) The responsible party will support all costs of the notification procedure.
- 3) The parties shall take all measures at their disposal to limit the consequences of Force Majeure.
- 4) If the party claiming force majeure does not notify the commencement and termination of the force majeure, under the terms and conditions laid down, it will not be exempted from responsibility and will pay all damages caused by the lack of notice to the other Party.
- 5) The execution of the contract is suspended from the occurrence of force majeure during the whole period of its action.
- 6) If force majeure and / or its effects lead to the suspension of the execution of this Subsidy contract for a period longer than 3 months, the Parties will meet within a period not exceeding 10 calendar days from the expiry date of this period in order to agree on how to continue, modify or terminate the Contract.
- 7) Fortuitous event does not exonerate the parties in case of failure to execute totally or partially the obligations under this Contract.

#### **§ 17 Correspondence**

- 1) To the effect of this contract, the parties shall choose headquarters at the address mentioned below where any official notifications can be lawfully served:

MA -.....[Name, address, telephone, fax, email address, fiscal registration number] (as MA)

JS -.....[Name, address, telephone, fax, email address, fiscal registration number] (as JS)

Lead Beneficiary- .....[Name, address, telephone, fax, email address, fiscal registration number]

- 2) All correspondence between the MA and the LB shall be done through the JS, in English.
- 3) Any change of headquarters shall be forwarded to the other party of this contract within 15 calendar days following the change of Address.

#### **§ 18 Applicable law and settlement of disputes**

- 1) In case a dispute arises between the MA and the LB, regarding the implementation of the present contract, a friendly conciliation shall be attempted. The competent legal authorities from Bucharest shall solve the dispute in case no mutual agreement can be reached.
- 2) Romanian law governs the present contract.
- 3) The present contract forces the parties to observe in all and with good faith every provision, according to the principle of the bindery legal force of the contract between parties.
- 4) If any provision in this contract should be wholly or partly ineffective, the parties to this contract undertake to replace the ineffective provision by an effective provision which comes as close as possible to the purpose of the ineffective provision.

**§ 19 Final provisions**

- 1) This Contract is issued in three original copies, in English language, one for the Lead Beneficiary, one for the Managing Authority and one for the Joint Secretariat.
- 2) The following Annexes shall be deemed to form and be read and construed as part of this contract:
  - Annex 1: Budget of the project
  - Annex 2: Approved application form
  - Annex 3: Partnership Agreement
- 3) The contract 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) Subsidy contract;
  - b) Any subsequent amendments of the contract and its Annexes made in accordance with the provisions of Article 14.

**Managing Authority**

**Legal representative:**

**Name:**

**Signature**

**Date**

**Lead Beneficiary**

**Legal representative:**

**Name:**

**Signature**

**Date**