

**GRANT CONTRACT**  
**- EXTERNAL ACTIONS OF THE EUROPEAN UNION -**

**HUSKROUA ENI CBC Programme**

*HUSKROUA/1901/7.1/0054*

The Ministry of Foreign Affairs and Trade (Bem rakpart 47., 1027, Budapest, Hungary) acting as the Managing Authority for the Hungary-Slovakia-Romania-Ukraine ENI Cross-border Cooperation Programme 2014-2020 (hereinafter referred to as **Managing Authority**)

of the one part,

and  
Prešov Self-Governing Region  
Public organisation  
37870475  
Slovakia, 08001, Prešov, Námestie mieru 2,  
(hereinafter referred to as **Lead Beneficiary**)

of the other part,

(hereinafter collectively referred to as the **Parties**)

have agreed as follows:

**PREAMBLE**

The Lead Beneficiary assures that the Project is implemented and managed in accordance with the provisions of this Grant Contract (hereinafter referred to as **Contract**), with the relevant EU legislation and horizontal policies of the EU in force, with the applicable national legislation and with all instructions set out in the project implementation manual of the Programme.

The Contract is concluded on the basis of the following legal provisions:

- Commission Implementing Decision of 8 October 2014 adopting a programming document for European Union support to ENI Cross-Border Cooperation for the period 2014-2020 (hereinafter referred to as Programming Document)
- Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (hereinafter referred to as ENI Regulation);
- Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action (hereinafter referred to as ENI CIR);
- Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument (hereinafter referred to as ENI CBC IR);
- Commission Implementing Regulation (EU) 2020/879 of 23 June 2020 amending Implementing Regulation (EU) No 897/2014 as regards specific provisions to align the provisions for the

implementation of cross-border cooperation programs financed under the European Neighborhood Instrument with specific measures in response to the COVID-19 pandemic

- Regulation (EU) 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;
- Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012;
- Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests – with reference to Article 5;
- Commission Implementing Decision of 17 December 2015 number C(2015) 9180 adopting the Hungary-Slovakia-Romania-Ukraine ENI Cross-Border Cooperation Programme 2014-2020 (hereinafter referred to as JOP);
- National rules applicable to the Lead Beneficiary and its Beneficiaries;
- Decree no. 554 of the Cabinet of Ministers of Ukraine of 11 July 2018;
- State Aid applicable rules;
- Guidelines for Applicants;
- ENI CBC Financing Agreement of 19 December 2016 concluded between the European Commission and Ukraine;
- Memorandum of Understanding concluded between Hungary and the Member States participating in the Programme;
- Project implementation manual of the Programme.

#### **ARTICLE 1 – PURPOSE**

- 1.1. The purpose of this Contract is the award of a grant by the Joint Monitoring Committee for the implementation of the Project entitled: **Improving accessibility and mobility in the SK-UA cross-border region** ("the Project") described in Annex I. The grant is financed from the European Neighbourhood Instrument in the framework of the cross-border cooperation programme Hungary-Slovakia-Romania-Ukraine 2014-2020.
- 1.2. The Lead Beneficiary shall be awarded the grant on the terms and conditions set out in this Contract, which consists of these conditions and the annexes, which the Lead Beneficiary hereby declares it has noted and accepted.
- 1.3. The Contract is signed in accordance with the decision of the Joint Monitoring Committee from **18.11.2020** to award a grant to the Project.
- 1.4. The Lead Beneficiary accepts the grant and undertakes to carry out the Project under its own responsibility.
- 1.5. The Lead Beneficiary and the Managing Authority are the only parties to this Contract.

#### **ARTICLE 2 – IMPLEMENTATION PERIOD OF THE PROJECT**

- 2.1 This Contract shall enter into force when both Parties signs. The Lead Beneficiary undertakes to sign the contract within 30 days from the date of its reception from the Managing Authority.
- 2.2 Implementation of the Project shall begin on the following date: **01.06.2021**

- 2.3 The Project's implementation period, as laid down in the Description of the Project, annexed to this contract (Annex I), is **24 months**.
- 2.4 The execution period of this Contract shall end at the moment when final payment is paid by the Managing Authority and, in any event, at the latest 12 months after the end of the implementation period as stipulated in Article 2.3 unless postponed in accordance with Article 17.15.

### **ARTICLE 3 – FINANCING OF THE PROJECT**

- 3.1 The total cost of the Project is estimated at **1 187 750,22 EURO**, as set out in the Budget of the Project, annexed to this Contract (Annex II).
- 3.2 The Managing Authority undertakes to finance a maximum of **1 033 842,47 EURO**, equivalent to 87,04% of the estimated total eligible cost of the Project.; the final amount of the eligible costs shall be established in accordance with Articles 10 and 3.5 of this Contract.
- 3.3 Pursuant to Article 10.5, **2,00%** (*maximum 2%*) of the final amount of direct eligible costs of the Project without investments and works established in accordance with Article 10, may be claimed by the Lead Beneficiary as indirect costs in the form of flat rate financing.
- 3.4 Pursuant to Article 10, the Regulation under which this Contract is financed authorises payment of taxes, including VAT, in the case the Lead Beneficiary can show it cannot reclaim them.
- 3.5 The grant may not exceed the maximum ceiling in Article 3.2 of the Contract either in terms of the absolute value or the percentage stated therein.

If the eligible costs of the Project at the end of the Project are less than the estimated eligible costs as referred to in Article 3.1 of the Contract, the grant shall be limited to the aggregated amount verified in accordance with Art. 6.7 of this Contract for each Beneficiary.

- 3.6 In addition and without prejudice to its right to terminate this Contract pursuant to Article 17, if the Project is implemented poorly or partially - and therefore not in accordance with the Description of the Project in Annex I - or late, the Managing Authority may, by a duly reasoned decision and after allowing the Lead Beneficiary to submit its observations, reduce the initial grant in line with the actual implementation of the Project and in accordance with the terms of this Contract. This applies as well with regards to the compliance with the visibility obligations set out in Article 19.

### **ARTICLE 4 – GENERAL OBLIGATIONS AND LIABILITIES**

- 4.1 This Contract and the payments attached to it may not be assigned to a third party in any manner whatsoever without the prior written consent of the Joint Monitoring Committee.
- 4.2 The Lead Beneficiary shall act in partnership with one or more project Partners (**Beneficiaries**) identified in the Description of the Project. Beneficiaries take part in the implementation of the Project, and the costs they incur are eligible in the same way as those incurred by the Lead Beneficiary. With the exception of infrastructure costs, project Beneficiaries may subcontract a limited portion of the project however the bulk of the activities identified in the Description of the Project must be implemented by the Lead Beneficiary and its Beneficiaries.
- 4.3 The Lead Beneficiary alone shall be accountable to the Managing Authority for the implementation of the Project. It shall undertake that the conditions applicable to it under Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 17.11-23 shall also apply to its Project Beneficiary(ies) (hereinafter referred to as Beneficiary). **In particular, the Lead Beneficiary should undertake that the conditions applicable to it under Article 14 on the recovery procedure by the EU Member States and Ukraine and the European Commission shall also apply to its Project Beneficiary(ies) (Beneficiary).** It shall include provisions to that effect as appropriate in its contracts with them. The level of responsibilities shall appropriately and clearly be laid down in the relevant Partnership Agreement.

- 4.4 The Lead Beneficiary is liable towards the Managing Authority for ensuring that all its Beneficiaries fulfil their obligations under this Project. It is also liable towards the Managing Authority for any breach of obligations under this Project by its Beneficiaries in the same way as for its own conduct.
- 4.5 The Managing Authority and the Joint Technical Secretariat cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Lead Beneficiary and Beneficiaries while the Project is being carried out or as a consequence of the Project. The Managing Authority and the Joint Technical Secretariat cannot, therefore, accept any claim for compensation or increases in payment in connection with such damage or injury.
- 4.6 The Lead Beneficiary shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them while the Project is being carried out or as a consequence of the Project. The Lead Beneficiary shall discharge the Managing Authority/Joint Technical Secretariat of all liability arising from any claim or project brought as a result of an infringement of rules or regulations by the Lead Beneficiary or the Lead Beneficiary's employees or individuals for whom those employees are responsible, or as a result of violation of a third party's rights. For the purpose of Article 3 of this Contract employees of the Lead Beneficiary shall be considered third parties.

#### **ARTICLE 5 – ROLE OF THE LEAD BENEFICIARY**

The Lead Beneficiary shall:

- a) monitor that the Project is implemented in accordance with this Contract and ensure coordination with all Beneficiaries in the implementation of the Project;
- b) be the intermediary for all communications between the Beneficiaries and the Managing Authority/Joint Technical Secretariat;
- c) be responsible for supplying all documents and information to the Managing Authority/Joint Technical Secretariat which may be required under this Contract, in particular in relation to the reports and the requests for payment. Where information from the Beneficiaries is required, the Lead Beneficiary shall be responsible for obtaining, verifying and consolidating this information before passing it on to the Managing Authority/Joint Technical Secretariat.

Any information given, as well as any request made by the Lead Beneficiary to the Managing Authority/Joint Technical Secretariat, shall be deemed to have been given in agreement with all Beneficiaries;

- d) inform the Managing Authority/Joint Technical Secretariat of any event likely to significantly affect or delay the implementation of the Project;
- e) inform the Managing Authority/Joint Technical Secretariat of any change in the legal, financial, technical, organisational or ownership situation of the Lead Beneficiary/Beneficiaries, as well as, of any change in the name, address or legal representative of the Lead Beneficiary/Beneficiaries;
- f) be responsible in the event of audits, checks, monitoring or evaluations, as described in Article 11 for providing all the necessary documents, including the accounts of the Beneficiaries, copies of the most relevant supporting documents and signed copies of any contract concluded according to Article 15;
- g) have full financial responsibility for ensuring that the Project is implemented in accordance with this Contract;
- h) establish the payment requests in accordance with the Contract;

- i) be the sole recipient, on behalf of all of the Beneficiaries, of the payments of the Managing Authority. The Lead Beneficiary shall ensure that the appropriate payments are then made to the Beneficiaries without unjustified delay;
- j) not delegate any, or part of, these tasks to the Beneficiaries or other entities.

## **ARTICLE 6 – NARRATIVE AND FINANCIAL REPORTING**

6.1 Narrative and financial reports shall be produced in support of payment requests, in compliance with Article 7.2 of this Contract.

6.2 The Lead Beneficiary shall provide the Joint Technical Secretariat with all required information on the implementation of the Project. The report shall describe the implementation of the Project according to the activities envisaged, difficulties encountered and measures taken to overcome problems, eventual changes introduced, as well as the degree of achievement of its results (outcomes and outputs) as measured by corresponding indicators. The report shall be laid out in such a way as to allow monitoring of the objective(s) and results, the implementation progress of foreseen activities, the means envisaged or employed and the budget details for the Project. The level of detail in any report should match that of the Description of the Project and of the Budget for the Project. The Lead Beneficiary shall collect all the necessary information and draw up consolidated interim and final reports. These reports shall:

- a) cover the Project as a whole, regardless of which part of it is financed by the Managing Authority;
- b) consist of a narrative and a financial section drafted using the templates provided by the Managing Authority;
- c) provide a full account of all aspects of the Project's implementation for the period covered, including in case of simplified cost options the qualitative and quantitative information needed to demonstrate the fulfilment of the conditions for reimbursement established in this Contract;
- d) include the current results within an updated table based on the logical framework matrix including the results achieved by the Project (outcomes and outputs) as measured by their corresponding indicators; agreed baselines and targets, and relevant sources of verification;
- e) determine if the intervention logic is still valid and propose any relevant modification including regarding the logical framework matrix;
- f) determine if the budget and financial plan is still valid and propose any relevant modification;
- g) be drafted in the currency and language of this Contract;
- h) include any update on the activity and time plan, communication plan and procurement plan;
- i) include any relevant reports, publications, press releases and updates related to the Project.

6.3 Additionally, the final report shall:

- a) cover any period not covered by the previous reports;
- b) include the proofs of the transfers of ownership as referred to in Article 12

6.4 The Managing Authority/Joint Technical Secretariat may request additional information at any time. The Lead Beneficiary shall provide this information within 30 days of the request, in the language of the Contract.

- 6.5 If the Lead Beneficiary fails to provide any report or fails to provide any additional information requested by the Joint Technical Secretariat within the set deadline without an acceptable and written explanation of the reasons, the Managing Authority may terminate this Contract according to Article 17.12(a) and (f) and may request full or partial repayment of amounts unduly paid for the Project in accordance with last paragraph of Article 17.17.
- 6.6 Reports shall be submitted in Euro, and may be drawn from financial statements denominated in other currencies, on the basis of the Lead Beneficiary's applicable legislation and applicable accounting standards. In such case and for the purpose of reporting, conversion into the currency set in the Contract shall be made using the rate monthly accounting exchange rate of the Commission of the month during which the expenditure was submitted for examination in view of the expenditure and revenue verification report in accordance with Article 32(1) of the ENI CBC IR.

Unless otherwise provided for in the Contract, costs incurred in other currencies than the one used in the Lead Beneficiary's accounts for the Project shall be converted according to its usual accounting practices, provided they respect the following basic requirements:

- (i) they are written down as an accounting rule, i.e. they are a standard practice of the Lead Beneficiary,
- (ii) they are applied consistently,
- (iii) they give equal treatment to all types of transactions and funding sources,
- (iv) the system can be demonstrated and the exchange rates are easily accessible for verifications

In the event of an exceptional exchange-rate fluctuation, the Parties shall consult each other with a view to amending the Project in order to lessen the impact of such a fluctuation. Where necessary, the Managing Authority may take additional measures such as terminating the Contract.

- 6.7 Each beneficiary must provide an expenditure and revenue verification report after each 12 months period via Interreg + system and for any request for further pre-financing payment. Expenditure declared by the beneficiary in support of a payment request shall be examined by an auditor approved by the Ukrainian Control Contact Point or by a national controller in the Member State being independent from the beneficiary. The auditor or the national controller shall examine whether the costs declared by the beneficiary and the revenue of the project are real, accurately recorded and eligible in accordance with this contract and related instructions and provisions. Lead Beneficiary shall collect the approved expenditure and revenue verification report from the Beneficiary and submit to the JTS in due time.

The expenditure and revenue verification report shall conform to the template provided by the Managing Authority, shall cover all expenditure and revenue not covered by any previous expenditure and revenue verification report and shall be produced by a national controller or by an auditor. The auditor and the national controller shall meet the requirements set out in Article 32(1) of the ENI CBC IR.

- 6.8 The Project implementation manual of the Programme may set out additional reporting requirements.

## **ARTICLE 7 – PAYMENT ARRANGEMENTS**

- 7.1 The first instalment of pre-financing shall be paid to the Lead Beneficiary within 30 days, as from the date of reception by the Managing Authority of the signed Contract. The payment shall be carried out by the Managing Authority without any request for payment.
- 7.2 Payment shall be made according to the following procedure:

**Option 2 – for Projects with more than 12 months and maximum 24 months:**

***A) Project with infrastructure component or works requiring building permission***

First instalment of pre-financing (10% of the total ENI contribution financed by the Managing Authority): **103 384,25 EURO**.

Second instalment of pre-financing (40% of the total ENI contribution financed by the Managing Authority): **413 536,99 EURO**, at the award of the main works procurement tender, as indicated in the procurement plan.

Third instalment of pre-financing (40% of the total ENI contribution financed by the Managing Authority): **413 536,99 EURO**, deducting the EU contribution corresponding to the pre-financing unspent and/or ineligible, at the approval of the report for the first 12 months of implementation.

Final payment (10% of the total ENI contribution financed by the Managing Authority deducting the EU contribution corresponding to the pre-financing unspent and/or ineligible, at the approval of the Project final report): **103 384,24 EURO**.

- 7.3 With the exception of the first instalment and of the second instalment in case of projects with infrastructure component or works requiring building permission, pre-financing may only be given if the part of the expenditure actually incurred which is financed by the Managing Authority (by applying the percentage set out in Article 3.2 of the Contract) stands at 100% of the previous payment as supported by the corresponding interim report and by an expenditure and revenue verification report.

Where the consumption of the previous pre-financing is less than 100%, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing payment.

After the first 12 month reporting period the second instalment and in case of projects with infrastructure component or works requiring building permission the third instalment of pre-financing may be given without reduction as laid down in Article 7.2 if the part of the expenditure actually incurred which is financed by the Managing Authority (by applying the percentage set out in Article 3.2 of the Contract) stands at 50% of the previous payment(s) as supported by the corresponding interim report and by an expenditure and revenue verification report.

Where the consumption of the first pre-financing and in case of projects with infrastructure component or works requiring building permission both the first pre-financing and the second instalment is less than 50%, the amount of the new pre-financing payment shall be reduced by the unused amounts of the 50% of the previous pre-financing payment(s).

- 7.4 The total sum of pre-financing under the Contract may not exceed 90% of the amount referred to in Article 3.2 of the Contract.
- 7.5 The Lead Beneficiary shall transfer the corresponding amounts of the grant to its Beneficiaries without delay as from the date of receipt of the instalment of grant, proportionally to each Beneficiary's EU contribution to the Project in case of first pre-financing and proportionally to each Beneficiary's verified expenditures in case of further payments, without making any deduction, retention or further specific charge, and shall submit the proof of transfer to the Joint Technical Secretariat within 10 days. If the Lead Beneficiary fails to provide all proofs of transfer within the set deadline, the Managing Authority shall suspend further payments until the Lead Beneficiary fulfils the above mentioned obligation.
- 7.6 The payment request shall be drafted using the template provided by the Managing Authority and shall be accompanied by:
- a) a narrative and financial report in line with Article 6;

- b) an expenditure and revenue verification report and a detailed list of expenditure;

For the purposes of the initial pre-financing payment, the signed contract serves as payment request.

Payment shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information provided.

- 7.7 Payments shall be made in Euro to the Lead Beneficiary's bank account opened in Euro referred to in the financial identification form in Annex III, which allows the identification of the funds received from the Programme. The initial pre-financing payment shall be made within 30 days as from the date of reception by the Managing Authority of the signed Contract.

Further pre-financing payments and payments of the balance shall be made within 30 days date from the acceptance of the report by the Joint Technical Secretariat.

- 7.8 In case the ENI balance of programme single bank account does not cover the amount to be paid, the payment process will be suspended till the transfer of the ENI contribution from the European Commission is credited to the programme single bank account.

#### **ARTICLE 8 – CONFLICT OF INTEREST AND GOOD CONDUCT**

- 8.1 The Lead Beneficiary shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of this Contract. Such conflict of interests may arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.
- 8.2 Any conflict of interests which may arise during performance of this Contract must be notified in writing to the Joint Technical Secretariat without delay. In the event of such conflict, the Lead Beneficiary shall immediately take all necessary steps to resolve it.
- 8.3 The Joint Technical Secretariat reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken if necessary.
- 8.4 The Lead Beneficiary shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under this Contract, the Lead Beneficiary shall replace, immediately and without compensation from the Managing Authority/Joint Technical Secretariat, any member of its staff in such a situation.
- 8.5 The Lead Beneficiary shall respect human rights and applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards.

#### **ARTICLE 9 – CONFIDENTIALITY**

- 9.1 Subject to Article 11, the Managing Authority and the Lead Beneficiary undertake to preserve the confidentiality of any information, notwithstanding its form, disclosed in writing or orally in relation to the implementation of this Contract and identified in writing as confidential until at least 5 years after the payment of the balance.
- 9.2 The Lead Beneficiary shall not use confidential information for any aim other than fulfilling their obligations under this Contract unless otherwise agreed with the Managing Authority/Joint Technical Secretariat.
- 9.3 The European Commission shall have access to all documents communicated to the Managing Authority and shall maintain the same level of confidentiality.

#### **ARTICLE 10 – FINANCIAL PROVISIONS**



- 10.1 Eligible costs are actual costs incurred by the Beneficiary which meet all the criteria set out in Article 48.1-4 of the ENI CBC IR
- 10.2 Subject to paragraphs 1 and 2 of the Article 48 of the ENI CBC IR direct costs of the Beneficiary shall be eligible in accordance with Article 48.5 of the ENI CBC IR
- 10.3 Cost listed in Article 49 of the ENI CBC IR relating to the implementation of the Project shall not be considered eligible.
- 10.4 Eligible costs may also be constituted by any or a combination of the following cost options:
- a) unit costs;
  - b) flat-rate financing;
- 10.5 The methods used by the Lead Beneficiary/Beneficiaries to determine unit costs or flat-rates shall be clearly described and substantiated in Annex II Budget for the Project and shall ensure compliance with the no-profit rule and shall avoid double funding of costs. The information used can be based on the Lead Beneficiary/Beneficiary's historical and/or actual accounting or on external information where available and appropriate.

Costs declared under simplified cost options shall satisfy the eligibility criteria set out in Article 10.1 and 10.2. They do not need to be backed by accounting or supporting documents, save those necessary to demonstrate the fulfilment of the conditions for reimbursement established in Annex I and II. These costs may not include ineligible costs as referred to in Article 10.3 or costs already declared under another costs item or heading of the Budget for the Project. The amounts or rates of unit costs or flat-rates set out in Annex II Budget for the Project may not be amended unilaterally and may not be challenged by ex post verifications.

- 10.6 The total amount of financing that may be awarded on the basis of simplified cost options in accordance with Article 10.4 a) to b) may not exceed EUR 60 000 per each project.
- 10.7 The indirect costs for the Project are those eligible costs which may not be identified as specific costs directly linked to the implementation of the Project and may not be booked to it directly according to the conditions of eligibility in Article 10.1. However, they are incurred by the Lead Beneficiary/ Beneficiaries in connection with the eligible direct costs for the Project. They may not include ineligible costs as referred to in Article 10.3 or costs already declared under another costs item or heading of the Budget for the Project.
- 10.8 A fixed percentage of the total amount of direct eligible costs of the Project not exceeding the percentage laid down in Article 3 of this Contract may be claimed to cover indirect costs for the Project in the form of flat rate financing. Flat-rate funding in respect of indirect costs does not need to be supported by accounting documents. This amount shall not be taken into account with regard to the maximum amount of simplified cost options.
- 10.9 Any contributions in kind, which shall be listed separately in Annex II Budget, do not represent actual expenditure and are not eligible costs. Contributions in kind may not be treated as co-financing by the Lead Beneficiary/Beneficiaries. The cost of staff assigned to the Project shall not be considered as contribution in kind and may be considered as part of the minimum 10 % co-financing.
- 10.10 The grant may not produce a profit for the Beneficiary. Profit is defined as a surplus of the receipts over the eligible costs approved by the Managing Authority when the request for payment of the balance is made. The receipts to be taken into account are the consolidated receipts on the date on which the payment request for the balance is made by the Lead Beneficiary that fall within one of the three following categories:

- a) revenue generated by the Project above the threshold of the Lead Beneficiary's and Beneficiaries' co-financing
- b) financial contributions specifically assigned by the donors to the financing of the same eligible costs financed by this Contract and declared by the Lead Beneficiary as actual costs under this Contract. Further details of handling financial contributions paid by donors are laid down in programme rules
- c) interest from pre-financing in case it has not been used for project activities.

Where the final amount of the grant determined in accordance with the Contract would result in a profit, it shall be reduced according to programme rules.

10.11 Without prejudice to Article 17.11-23, the time-limits for approval of a report and subsequent payments may be suspended by notifying the Lead Beneficiary that:

- a) the amount indicated in its request of payments is not due, or;
- b) proper supporting documents have not been supplied, or;
- c) clarifications, modifications or additional information to the narrative or financial sections of reports are needed, or;
- d) there are doubts on the eligibility of expenditure and it is necessary to carry out additional checks, including on-the-spot checks to make sure that the expenditure is eligible, or;
- e) it is necessary to verify whether presumed substantial errors, irregularities or fraud have occurred in the grant award procedure or the implementation of the Project, or;
- f) it is necessary to verify whether the Lead Beneficiary have breached any substantial obligations under this Contract, or;
- g) the visibility obligations set out in Article 19 are not complied with.

The suspension of the time-limits for approval of a report and subsequent payments starts when the above notification is sent to the Lead Beneficiary. The time-limit starts running again on the date on which a correctly formulated request for payment is recorded and/or the required information is received. The Lead Beneficiary shall provide any requested information, clarification or document within 30 days of the request.

If, notwithstanding the information, clarification or document provided by the Lead Beneficiary, the payment request is still inadmissible, or if the award procedure or the implementation of the grant proves to have been subject to substantial errors, irregularities, fraud, or breach of obligations, then the Managing Authority may refuse to proceed further with payments and may, in the cases foreseen in Article 17.11-23, terminate accordingly this Contract.

In addition, the Managing Authority may also suspend payments as a precautionary measure without prior notice, prior to, or instead of, terminating this Contract as provided for in Article 17.11-23, as well as applying administrative penalties.

10.12 The Lead Beneficiary shall ensure the respect of the State Aid applicable legislation, as well as the State Aid provisions laid out in Chapter 10 of the Association Agreement between the European Union and Ukraine, in accordance with the instructions set out in the Project implementation manual.

## **ARTICLE 11 – ACCOUNTS AND TECHNICAL AND FINANCIAL CHECKS**

- 11.1 The Lead Beneficiary shall keep accurate and regular accounts of the implementation of the Project using an appropriate accounting and double-entry book-keeping system. The accounts:
- a) may be an integrated part of or an adjunct to the Beneficiary's regular system;
  - b) shall comply with the accounting and bookkeeping policies and rules that apply in the country concerned;
  - c) shall enable income and expenditure relating to the Project to be easily traced, identified and verified.
- 11.2 The Lead Beneficiary shall ensure that financial section of any report as required under Article 6 and in the Project implementation manual of the Programme can be properly and easily reconciled to the accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose, the Lead Beneficiary shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification.
- 11.3 The Lead Beneficiary shall allow verifications to be carried out by the Managing Authority, the National Authority, the Audit Authority and members of Group of Auditors, the Control Contact Point, the European Commission, the European Anti-Fraud Office, the AFCOS in Member States and the anti-fraud body identified in the Financing Agreement by Ukraine, the European Court of Auditors and any external auditor authorised by any of these bodies. The Lead Beneficiary has to take all steps to facilitate their work.
- 11.4 The Lead Beneficiary shall allow the above entities to:
- a) access the sites and locations at which the Project is implemented;
  - b) examine its accounting and information systems, documents and databases concerning the technical and financial management of the Project;
  - c) take copies of documents;
  - d) carry out on-the-spot-checks;
  - e) conduct a full audit on the basis of all accounting documents and any other document relevant to the financing of the Project.
- 11.5 Additionally the European Anti-Fraud Office and the other above-mentioned anti-fraud agencies, shall be allowed to carry out on-the-spot checks and inspections in accordance with the procedures laid down by the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities, as well as the Financing Agreement between the European Commission and Ukraine. Where appropriate, the findings may lead to recovery by the European Commission.
- 11.6 Access given to agents of the above-mentioned bodies carrying out verifications as provided for by this Article as well as by Article 6.7 and 7.6 shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject.
- 11.7 Each Beneficiary shall keep all records, accounting and supporting documents related to this Contract for five years following the payment of the balance of the programme, in accordance with Article 70 of the ENI CBC IR, and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim has been disposed of. The Managing Authority shall inform the Lead Beneficiary when the payment of the balance of the Programme is made by the European Commission.

They shall be easily accessible and filed so as to facilitate their examination and the Lead Beneficiary shall inform the Managing Authority of their precise location in the final report. The Lead Beneficiary shall inform of any change of location without delay.

- 11.8 All the supporting documents shall be available either in the original form, including in electronic form, or in duly justified cases as a copy.
- 11.9 In addition to the reports mentioned in Article 6, the documents referred to in this Article include, *inter alia*:
- a) Accounting records (computerised or manual) from the Lead Beneficiary's accounting system such as general ledger, sub-ledgers and payroll accounts, fixed assets registers and other relevant accounting information;
  - b) Proof of procurement procedures such as tendering documents, bids from tenderers and evaluation reports;
  - c) Proof of commitments such as contracts and order forms;
  - d) Proof of delivery of services such as approved reports, time sheets, photos, transport tickets, proof of attending seminars, conferences and training courses (including relevant documentation and material delivered, certificates) etc;
  - e) Proof of receipt of goods such as delivery slips from suppliers;
  - f) Proof of completion of works, such as acceptance certificates, photos, quality certificates and final technical documentation;
  - g) Proof of purchase such as invoices and receipts;
  - h) Proof of payment such as bank statements, debit notices, proof of settlement by the contractor;
  - i) Proof that taxes and/or VAT that have been paid cannot actually be reclaimed;
  - j) For fuel and oil expenses, a summary list of the distance covered, the average consumption of the vehicles used, fuel costs and maintenance costs;
  - k) Staff and payroll records such as contracts, salary statements, social security documents and time sheets.
- 11.10 Failure to comply with the obligations set forth in this Article constitutes a case of breach of a substantial obligation under this Contract. In this case, the Managing Authority may in particular suspend the Contract, approval of a report, payments or the time-limit for a payment, terminate the Contract and reduce the grant.

## **ARTICLE 12 – OWNERSHIP/USE OF RESULTS AND ASSETS**

- 12.1 Ownership of, and title and intellectual and industrial property rights to, the Project's results, reports and other documents relating to it will be vested in the Lead Beneficiary and Beneficiary(ies), in accordance with the conditions stipulated in the Partnership Agreement.
- 12.2 Without prejudice to Article 12.1, the Beneficiary grants the Managing Authority/Joint Technical Secretariat (and the European Commission) the right to use freely and as it sees fit, and in particular, to store, modify, translate, display, reproduce by any technical procedure, publish or communicate by any medium all documents deriving from the Project whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.
- 12.3 The Lead Beneficiary shall ensure that it has all rights to use any pre-existing intellectual property rights necessary to implement this Contract.

- 12.4 In case natural, recognizable persons are depicted in a photograph or film, the Lead Beneficiary shall, in the final report to the Joint Technical Secretariat, submit a statement of these persons giving their permissions for the described use of their images. The above does not refer to photographs taken or films shot in public places where random members of the public are identifiable only hypothetically and to public persons acting in their public activities.
- 12.5 Unless otherwise clearly specified in the Description of the Project in Annex I, the equipment, vehicles and supplies paid for by the Budget for the Project shall be transferred to the final beneficiaries of the Project, at the latest when submitting the final report.

If there are no final beneficiaries of the Project to whom the equipment, vehicles and supplies can be transferred, the Lead Beneficiary may retain ownership of these items or may transfer these items to:

- local authorities
- local Beneficiary(ies)

Such cases should be clearly specified in the Description of the Project in Annex I. Any deviation from the planned ownership and use of equipment, vehicles and supplies is subject to prior authorization. The Lead Beneficiary shall submit a justified written request for authorisation to the Managing Authority/Joint Technical Secretariat, with an inventory listing the items concerned and a proposal concerning their use, in due time and at the latest with the submission of the final report.

In no event may the end use jeopardize the sustainability of the Project or result in a profit for the Lead Beneficiary/Beneficiaries.

- 12.6 Copies of the proofs of transfer of any equipment and vehicles for which the purchase cost was more than 5.000 EUR per item, shall be attached to the final report. Proofs of transfer of equipment and vehicles whose purchase cost was less than 5.000 EUR per item shall be kept by the Lead Beneficiary for control purposes.
- 12.7 In accordance with Article 39.3 of ENI CBC IR, any project including an infrastructure component shall repay the Union contribution if, within five years of the project closure or within the period of time set out in state aid rules, where applicable, it is subject to a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives. Sums unduly paid in respect of the project shall be recovered by the Managing Authority in proportion to the period for which the requirement has not been fulfilled.

#### **ARTICLE 13 – EVALUATION/MONITORING OF THE PROJECT**

- 13.1 If the Managing Authority/Joint Technical Secretariat or the European Commission carries out an interim or ex post evaluation or a monitoring mission, the Lead Beneficiary shall undertake to provide it and/or the persons authorised by it with the documents or information necessary for the evaluation or monitoring mission.
- 13.2 If either the Lead Beneficiary or the Managing Authority/Joint Technical Secretariat carries out or commissions an evaluation in the course of the Project, it shall provide the other with a copy of the evaluation report.

#### **ARTICLE 14 – RECOVERY**

- 14.1 If any amount is unduly paid to any the project beneficiary, or if recovery is justified under the terms of this Contract, the beneficiary undertakes to pay the Lead Beneficiary, who will repay the Managing Authority these amounts.
- 14.2 In particular, payments made do not preclude the possibility for the Managing Authority to issue a recovery order following an expenditure and revenue verification report, a check or an audit or further verification of the payment request.
- 14.3 If verification reveals that the methods used by the beneficiary to determine unit costs or flat-rates are not compliant with the conditions established in this Contract, the Managing Authority shall be entitled to reduce the final amount of the grant proportionately up to the amount of the unit costs or flat rate financing.
- 14.4 The Lead Beneficiary undertakes to repay any amounts paid in excess of the final amount due to the Managing Authority within 60 days of the receipt of the debit note accompanied by the letter by which the Joint Technical Secretariat/Managing Authority requests the amount owed by the Lead Beneficiary.
- 14.5 Should the beneficiary fail to make repayment within the deadline set by the Managing Authority, the Managing Authority may increase the amounts due by adding interest at the rate applied by the European Central Bank to its main refinancing transactions in euro on the first working day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the Managing Authority, and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.
- 14.6 Amounts to be repaid to the Managing Authority may be offset against amounts of any kind due to the beneficiary corresponding to the HU-SK-RO-UA ENI CBC 2014-2020 funds by the Managing Authority, after informing it accordingly. This shall not affect the Parties' right to agree on payment in instalments.
- 14.7 The repayment under Article 14.4 or the offsetting under Article 14.6 amount to the payment of the balance.
- 14.8 Bank charges incurred by the repayment of amounts due to the Managing Authority shall be borne entirely by the beneficiary.
- 14.9 Without prejudice to the prerogative of the Managing Authority, if necessary, the European Commission may, as donor, proceed itself to the recovery by any means.

#### **ARTICLE 15 – AWARD AND IMPLEMENTATION OF SUBCONTRACTS**

- 15.1 If the Lead Beneficiary and Beneficiaries have to conclude subcontracts with contractors in order to carry out the Project, with the exception of the infrastructure costs, these may only cover a limited portion of the Project and shall respect the contract-award rules and rules of nationality and origin set out in the ENI CBC IR and in the Project implementation manual of the Programme. In particular, the beneficiary may not set any limitation to the nationality of the contractor. All supplies purchased shall originate from an eligible country, as defined in Article 9 of the ENI CBC IR. However, they may originate from any country when the amount of the supplies to be purchased is below 100.000€.
- 15.2 To the extent relevant, the Beneficiaries shall ensure that the conditions applicable to them under Articles 4, 6, 8, 11 and 19 are also applicable to all subcontractors. The Lead Beneficiary shall provide in its report to the Joint Technical Secretariat a comprehensive and detailed report on the award and implementation of the contracts awarded under Article 15.1, in accordance with the reporting requirements.

- 15.3 In duly justified cases, the subcontracting limit does not apply to Projects focused on investment activities, notably to Large Infrastructure Projects.

#### **ARTICLE 16 – AMENDMENT OF THE CONTRACT**

- 16.1 Any amendment to this Contract, including the annexes thereto, shall be set out in writing. This Contract can be modified only during its execution period.
- 16.2 The amendment may not have the purpose or the effect of making changes to this Contract that would call into question the grant award decision or be contrary to the equal treatment of applicants.
- 16.3 If an amendment is requested by the beneficiaries, the Lead Beneficiary shall submit a duly justified request to the Joint Technical Secretariat 30 days before the date on which the amendment should enter into force, unless there are special circumstances duly substantiated and accepted by the Joint Technical Secretariat. Such amendment will be embodied in form of an Addendum to the Contract.
- 16.4 Where the amendment to the Budget and/or Description of the Project does not affect the basic purpose of the Project and the financial impact is limited to a transfer between items within the same main budget heading including cancellation or introduction of an item, or a transfer between main budget headings involving a variation of 20% or less of the amount originally entered (or as modified by addendum) in relation to each concerned main heading for eligible costs, the Lead Beneficiary may amend the Budget and/or Description of the Project and shall inform the Joint Technical Secretariat accordingly. Lead Beneficiary shall submit such amendments collected during the concerned reporting period in form of a ‘request for modification(s)’ for approval to the Joint Technical Secretariat by the end of the reporting period but in the interim or final report at the latest. This method may not be used to amend the headings for indirect costs, or the amounts or rates of simplified cost options defined in the Contract.
- 16.5 Changes of address, bank account or auditor may simply be notified by the Lead Beneficiary. However, in duly substantiated circumstances, the Joint Technical Secretariat may oppose the Lead Beneficiary’s choice.

In case the Lead Beneficiary fails to properly inform the Joint Technical Secretariat on the details of its bank account opened specifically for the project, all consequences including those of financial nature shall be borne by the Lead Beneficiary.

- 16.6 The Joint Technical Secretariat reserves the right to require that the auditor referred to in Article 21.2 be replaced if considerations which were unknown when this Contract was signed cast doubt on the auditor’s independence or there is no compliance with professional standards or the terms of reference for expenditure verification set out by the programme.

#### **ARTICLE 17 – EXTENSION, SUSPENSION AND TERMINATION OF THE CONTRACT**

- 17.1 The implementation period of the Project is laid down in Article 2 of this Contract. The Lead Beneficiary shall inform the Joint Technical Secretariat without delay of any circumstances likely to hamper or delay the implementation of the Project. In exceptional and justified cases the Lead Beneficiary may request an extension of the Project implementation period no later than 30 days before it ends in accordance with Article 16. The request shall be accompanied by all the supporting evidence needed for its appraisal. Final decision on such requests is a subject of approval by the Managing Authority.

- 17.2 The Lead Beneficiary may suspend implementation of the Project, or any part thereof, if exceptional circumstances, notably of force majeure, make such implementation excessively difficult or dangerous. The Lead Beneficiary shall inform the Joint Technical Secretariat without delay, stating the nature, probable duration and foreseeable effects of the suspension.
- 17.3 The Lead Beneficiary or the Managing Authority may then terminate this Contract in accordance with Article 17.11. If the Contract is not terminated, the Lead Beneficiary shall endeavour to minimise the time of its suspension and any possible damage and shall resume implementation once circumstances allow, informing the Joint Technical Secretariat accordingly.
- 17.4 The Managing Authority/Joint Technical Secretariat may request the Lead Beneficiary to suspend implementation of the Project, or any part thereof, if exceptional circumstances, notably of force majeure, make such implementation excessively difficult or dangerous. To this purpose, the Managing Authority/Joint Technical Secretariat shall inform the Lead Beneficiary stating the nature and probable duration of the suspension.
- 17.5. The Lead Beneficiary or the Managing Authority may then terminate this Contract in accordance with Article 17.11-23. If the Contract is not terminated, the Lead Beneficiary shall endeavour to minimise the time of its suspension and any possible damage and shall resume implementation once circumstances allow and after having obtained the approval of the Managing Authority/Joint Technical Secretariat.
- 17.6. The Managing Authority may also suspend this Contract or the participation of a Lead Beneficiary/Beneficiaries in this Contract if the Managing Authority/Joint Technical Secretariat has evidence that, or if, for objective and well justified reasons, the Managing Authority/Joint Technical Secretariat deems necessary to verify whether presumably:
- a) the grant award procedure or the implementation of the Project has been subject to substantial errors, irregularities, fraud or corruption;
  - b) the Lead Beneficiary/Beneficiaries have breached any substantial obligation under this Contract.
- 17.7. The Lead Beneficiary shall provide any requested information, clarification or document within 30 days of receipt of the requests sent by the Managing Authority/Joint Technical Secretariat. If, notwithstanding the information, clarification or document provided by the Lead Beneficiary, the award procedure or the implementation of the grant prove to have been subject to substantial errors, irregularities, fraud, or breach of obligations, then the Managing Authority may terminate this Contract according to Article 17.11.
- 17.8. The term force majeure, as used herein covers any unforeseeable events, not within the control of either party to this Contract and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosion. A decision of the European Union to suspend the cooperation with the Partner Country is considered to be a case of force majeure when it implies suspending funding under this Contract.
- 17.9. The Lead Beneficiary shall not be held in breach of its contractual obligations if it is prevented from fulfilling them by circumstances of force majeure.
- 17.10. In case of suspension according to Articles 17.2, 17.4 and 17.6, the implementation period of the Project shall be extended by a period equivalent to the length of suspension, without



prejudice to any amendment to the Contract that may be necessary to adapt the Project to the new implementing conditions.

- 17.11 In the cases foreseen in Article 17.2 and 17.4, if the Lead Beneficiary or the Managing Authority believes that this Contract can no longer be executed effectively or appropriately, it shall duly consult the other. Failing agreement on a solution, the Lead Beneficiary or the Managing Authority may terminate this Contract by serving two-month written notice, without being required to pay indemnity.
- 17.12 Without prejudice to Article 17.11, in the following circumstances the Managing Authority may, after having duly consulted the Lead Beneficiary, terminate this Contract without any indemnity on its part when:
- a) the Lead Beneficiary fails, without justification, to fulfil any substantial obligation incumbent on them individually or collectively by this Contract and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of receipt of the letter;
  - b) the Lead Beneficiary or any person that assumes unlimited liability for the debts of the Lead Beneficiary is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulations relevant to the Beneficiary;
  - c) the Lead Beneficiary, or any related entity or person, have been found guilty of an offence concerning their professional conduct proven by any means;
  - d) it has been established by a final judgment or a final administrative decision or by proof in possession of the Managing Authority that the Lead Beneficiary has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or has committed an irregularity;
  - e) a change to the Lead Beneficiary's legal, financial, technical, organisational or ownership situation or the termination of the participation of the Lead Beneficiary substantially affects the implementation of this Contract or calls into question the decision awarding the grant;
  - f) the Lead Beneficiary or any related person, are guilty of misrepresentation in supplying the information required in the award procedure or in the implementation of the Project or fail to supply – or fail to supply within the deadlines set under this Contract - any information related to the Project required by the Managing Authority/Joint Technical Secretariat;
  - g) the Lead Beneficiary has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
  - h) the Managing Authority/Joint Technical Secretariat has evidence that the Lead Beneficiary, or any related entity or person, has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Project;
  - i) the Lead Beneficiary is subject to an administrative penalty referred to in Article 17.18;
  - j) the Managing Authority/Joint Technical Secretariat has evidence that the Lead Beneficiary is subject to a conflict of interests;
  - k) the European Commission has evidence that the Lead Beneficiary has committed systemic or recurrent errors or irregularities, fraud, or serious breach of obligations under

other grants financed by the European Union and awarded to that specific Lead Beneficiary under similar conditions, provided that those errors, irregularities, fraud or serious breach of obligations have a material impact on this grant.

The cases of termination under points (b), (c), (d), (h), (j) and (k) may refer also to persons who are members of the administrative, management or supervisory body of the Lead Beneficiary and/or to persons having powers of representation, decision or control with regard to the Lead Beneficiary.

- 17.13 In the cases referred to in points (c), (f), (h) and (k) above, any related person means any physical person with powers of representation, decision-making or control in relation to the Lead Beneficiary. Any related entity means, in particular, any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive No 83/349/EEC of 13 June 1983.
- 17.14 In duly justified cases, the participation of a Beneficiary(ies) in this Contract may be also terminated by the Lead Beneficiary. To this purpose, the Lead Beneficiary shall communicate to the Managing Authority/Joint Technical Secretariat the reasons for the termination of its participation and the date on which the termination shall take effect, as well as a proposal on the reallocation of the tasks of the Beneficiary(ies) whose participation is terminated, or on its possible replacement. The proposal shall be sent in good time before the termination is due to take effect. If the Managing Authority/Joint Technical Secretariat agrees, the Contract shall be amended accordingly in conformity with Article 16 with the prior written consent of the Joint Monitoring Committee.
- 17.15 The payment obligations of the Managing Authority under this Contract shall end 18 months after the implementation period laid down in Article 2, unless this Contract is terminated according to Article 17.11-23.

The Managing Authority shall postpone this end date, so as to be able to fulfil its payment obligations, in all cases where the Lead Beneficiary has submitted a payment request in accordance with contractual provisions or, in case of dispute, until completion of the dispute settlement procedure provided for in Article 18. The Managing Authority shall notify the Lead Beneficiary of any postponement of the end date.

- 17.16 This Contract may be terminated if it has not given rise to any payment by the Managing Authority on top of the first instalment within two years of its signature.
- 17.17 The Joint Monitoring Committee will be notified by the Managing Authority concerning eventual decisions to terminate a Contract.
- 17.18 Upon termination of this Contract the Lead Beneficiary shall take all immediate steps to bring the Project to a close in a prompt and orderly manner and to reduce further expenditure to a minimum.

Without prejudice to Article 10, the Lead Beneficiary shall be entitled to payment only for the part of the Project carried out, excluding costs relating to current commitments that are due to be executed after termination.

To this purpose, the Lead Beneficiary shall introduce a payment request to the Managing Authority/Joint Technical Secretariat within the time limit of three months starting from the date of termination.

In the event of termination according to Article 17.11, the Managing Authority may agree to reimburse the unavoidable residual expenditures incurred during the notice period, provided, the first paragraph of this Article has been properly executed.

In the cases of termination foreseen in Article 17.12 a), c), d), f), h) and k) the Managing Authority may, after having properly consulted the Lead Beneficiary and depending on the gravity of the failings, request full or partial repayment of amounts unduly paid for the Project.

17.19 Without prejudice to the application of other remedies laid down in the Contract, a sanction of exclusion from all contracts and grants financed by the EU, may be imposed, after an adversarial procedure, upon the Lead Beneficiary who, in particular,

is guilty of grave professional misconduct, has committed irregularities or has been found in serious breach of its contractual obligations. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years;

is guilty of fraud, corruption and participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years;

17.20 In the situations mentioned in Article 17.18, in addition or in alternative to the sanction of exclusion, the Lead Beneficiary may also be subject to financial penalties representing 2-10% of the contract value.

17.21 Where the Managing Authority is entitled to impose financial penalties, it may deduct such financial penalties from any sums due to the Lead Beneficiary or call on the appropriate guarantee.

17.22 The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the Lead Beneficiary.

17.23 The abovementioned administrative sanctions may also be imposed to persons who are members of the administrative, management or supervisory body of the Lead Beneficiary, to persons having powers of representation, decision or control with regard to the Lead Beneficiary.

#### **ARTICLE 18 – APPLICABLE LAW AND DISPUTE SETTLEMENT**

18.1 This Contract shall be governed by the Hungarian law, being the law of the country of the Managing Authority.

18.2 The parties to this Contract shall do everything possible to settle amicably any dispute arising between them during the implementation of this Contract. To that end, they shall communicate their positions and any solution that they consider possible in writing, and meet each other at either's request. The Lead Beneficiary and the Managing Authority shall reply to a request sent for an amicable settlement within 30 days. Once this period has expired, or if the attempt to reach amicable settlement has not produced an agreement within 120 days of the first request, the Lead Beneficiary or the Managing Authority may notify the other part that it considers the procedure to have failed.

18.3 In the event of failure to reach an amicable agreement, the dispute may by common agreement of the Lead Beneficiary and the Managing Authority be submitted for conciliation by the European Commission. If no settlement is reached within 120 days of the opening of the conciliation procedure, each party may notify the other that it considers the procedure to have failed.

- 18.4 In the event of failure of the above procedures, each party to this Contract may submit the dispute to the courts of the country of the Managing Authority

#### **ARTICLE 19 – VISIBILITY**

- 19.1 Unless the European Commission agrees or requests otherwise, the Lead Beneficiary shall take all necessary steps to publicise the fact that the European Union has financed or co-financed the Project. Such measures shall comply with the Communication and Visibility Manual for European Union External Actions laid down and published by the European Commission, that can be found at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/visibility\\_requirements-near\\_english.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/visibility_requirements-near_english.pdf) and with any other provisions of the Hungary-Slovakia-Romania-Ukraine ENI Cross-border Cooperation Programme 2014-2020, as published in the web-site of the Programme.
- 19.2 The Lead Beneficiary shall submit a communication plan for the approval of the Managing Authority/Joint Technical Secretariat and report on its implementation in accordance with Article 6.
- 19.3 In particular, the Lead Beneficiary shall mention the Project and the European Union's financial contribution in information given to the final recipients of the Project, in its annual reports, and in any dealings with the media. It shall display the European Union and Programme logos wherever appropriate.
- 19.4 Any notice or publication by the Beneficiary concerning the Project, including those given at conferences or seminars, shall specify that the Project has received European Union funding by the Programme. Any publication by the Beneficiary, in whatever form and by whatever medium, including the internet, shall include the following statement: 'This document has been produced with the financial assistance of the European Union and the Programme. The contents of this document are the sole responsibility of Prešov Self-Governing Region and can under no circumstances be regarded as reflecting the position of the Managing Authority/ Joint Technical Secretariat or the European Union.'
- 19.5 The Lead Beneficiary authorises the Managing Authority/Joint Technical Secretariat and the European Commission to publish its name and address, nationality, the purpose of the grant, duration and location as well as the maximum amount of the grant and the rate of funding of the Project's costs, as laid down in Article 3. Derogation from publication of this information may be granted if it could endanger the Lead Beneficiary or harm his/her interest.

#### **ARTICLE 20 – DATA PROTECTION**

- 20.1 Any personal data will be processed in accordance with applicable national legislation solely for the purposes of the performance, management, monitoring and control of this Contract by the Managing Authority/Joint Technical Secretariat and may also be passed to the bodies charged with monitoring or inspection tasks under European Union law.
- 20.2 The Lead Beneficiary declares that it has informed the contact person of this Grant Contract and all the employees affected by the procession of their personal data required for the performance of this Contract and of their rights under the General Data Protection Regulation prior to the transfer of their personal data to the Managing Authority/Joint Technical Secretariat. General information on data protection is available on the website of the Programme.
- 20.3 The Lead Beneficiary shall limit access and use of personal data to that strictly necessary for the performance, management, monitoring and control of this Contract and shall adopt all

appropriate technical and organisational security measures necessary to preserve the strictest confidentiality and limit access to this data.

#### **ARTICLE 21 – CONTRACT ADDRESSES**

- 21.1 Any communication relating to this Contract, including payment requests and attached reports, requests for changes to bank account arrangements must be in writing, state the number and title of the Project and be sent to the following addresses:

For the Joint Technical Secretariat (on behalf of the Managing Authority)

Hungary, H-1053 Budapest, Szép u. 2. 3<sup>rd</sup> floor

For the Lead Beneficiary

Slovakia, 08001, Prešov, Námestie mieru 2

- 21.2 The audit company which will carry out the verification(s) for the Ukrainian Lead Beneficiary and/or Ukrainian Beneficiary(ies) referred to in Article 6.7 is/are

Velykyj Bereznyj village council - Business Partners, 79058 Lviv, Masaryk Street, 18/130,  
Tel: +380322493661, Email: [businesspartners@ukr.net](mailto:businesspartners@ukr.net)

Interregional Centre of Cross-Border Cooperation - Standard-Prof, 88017 Zakarpattya region,  
Uzhgorod, B.Khmelnyskyi Square, 21A, Tel: +380312673734, Email:  
[auditor\\_jakima@ukr.net](mailto:auditor_jakima@ukr.net)

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## **Article 22 - ANNEXES**

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

- Annex I: Description of the Project (updated sections 1-6 of the GAF)
- Annex II: Budget of the Project indicated per Beneficiary including ENI share in amount and in percentage
- Annex III: Financial identification form
- Annex IV: Legal Entity Sheet
- Annex V: Partnership Agreement

22.2 In the event of conflict between the provisions of the present Contract and any Annex thereto, the provisions of the Contract shall take precedence.

Done in English in 9 originals, one original being for the Managing Authority, one original being for the Joint Technical Secretariat and 7 originals being for the Lead Beneficiary.

### **For the Lead Beneficiary**

v. r. Milan Majerský  
President of the Presov self-governing region

Signature and stamp  
Date Presov 31.5.2021

### **For the Managing Authority**

v. r. KISS-PARCIU Péter  
Deputy State  
Secretary

Signature and stamp  
Date Budapest 25. 5. 2021

Táto zmluva bola zverejnená dňa: 3.6.2021

Táto zmluva nadobúda účinnosť dňa: 4.6.2021