

**Agreement between lead beneficiary and project Beneficiaries in the project  
{name, eMS project code}  
financed under the Interreg - IPA CBC Romania – Serbia Programme  
PARTNERSHIP AGREEMENT**

Having regard to

- 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 actions;
- Commission implementing regulation (EU) No 447/2014 of 2 May 2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession assistance (IPA II);
- 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 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (hereafter IPA II Regulation);
- 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;
- Commission Decision No 5667/06.08.2015 approving the Interreg - IPA CBC Romania – Serbia Programme for 2014-2020 period;

- Financing Agreement signed between the European Commission, Republic of Serbia and the Managing Authority.

the following agreement is concluded between

..... [Name, address, fiscal registration number], represented by .....  
(Lead beneficiary)

and

..... [Name, address, fiscal registration number], represented by .....  
(Beneficiary 2),

..... [Name, address, fiscal registration number], represented by .....  
(Beneficiary 3),

for the implementation of the project ..... [index and title of the project],  
approved by the Joint Monitoring Committee of the “Interreg - IPA CBC Romania –  
Serbia Programme” - on ..... [date] in ..... [place].

## **§ 1 Object**

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

## **§ 2 Duration of the agreement**

- 1) The agreement enters into force on the signature date the last party signs. The last party signing has the obligation to note the date.
- 2) The beginning date of the implementation of the project starts on the day the subsidy contract becomes effective.
- 3) The implementation period of the project is ..... months.
- 4) During the implementation period of the project as well as after the end of the implementation period for a 3 years period after the official closure of the Interreg IPA CBC Romania-Serbia, all project beneficiaries have the obligation to preserve and to present, to the Joint Secretariat (within the Regional Office for Cross-Border Cooperation Timisoara, Romania), MA (within the Ministry of Regional Development and Public Administration from Romania), NA (within Serbian European Integration Office) Certifying Authority (within the Romanian

Ministry of Regional Development and Public Administration), Audit Authority (within the Romanian Court of Accounts), European Commission (EC), European Court of Auditors and any other body designated to perform controls on the use of the financing, all project related documents, including the inventory for the actives gained as a result of using the funds. The time period shall be interrupted either in the case of legal proceedings or by a duly justified request of the Commission.

- 5) The agreement is valid for 5 years from the final payment. The validity period of the contract covers also the period between the ending of implementation period and final payment.

### **§ 3 Budget of the project**

- 1) The total budget of the operation is ..... EUR <amount in figures>, out of which:
  - i. - the total eligible value .... EUR (non-refundable financing and the contribution of the beneficiary), out of which:... <amount in figures> EUR IPA, representing 85 %
  - ii. ... <amount in figures> EUR State Budgets Co-financing, representing ...%
  - iii. ... <amount in figures> EUR Beneficiaries own contribution, representing ...%
- The non-eligible value is in amount of..... representing the total of non-eligible expenditure supported by the Lead Beneficiary and beneficiaries and shall be supported by the LB and beneficiaries according to the approved budget.
- 2) In the case of net revenue generating projects, the LB/beneficiaries shall repay to the MA the amounts according to the proportionality principle and observing the provisions of Regulation (EU) No. 1303/2013.

### **§ 4 Financing of the project**

- 1) MA awards a non-repayable contribution from the IPA of maximum .....<amount in figures> / ....EUR <amount in letters>, representing maximum 85 % of the total eligible value of the project mentioned at article 3.1 i) from the present agreement.
- 2) MA awards to Romanian beneficiaries a non-repayable contribution from the national state budget of .....EUR <amount in figures> / .....<amount in letters> Euro, representing maximum 13% of the total eligible value of the project specified at article 3 paragraph 1 ii) from the present agreement.
- 3) The Lead beneficiary and beneficiaries participate in the project with their own contribution representing .....<amount in figures> / .....<amount in letters>, representing maximum .....% of the total eligible value of the project mentioned in article 3 paragraph 1 i)) of the present agreement and support the non-eligible expenditure according to its contribution to the project.
- 4) The total eligible budget of LB/ beneficiary 2/ beneficiary 3 is .... out of

which ...% represents IPA, ...% represents national co-financing and ...% represents its own contribution<sup>1</sup>.

- 5) The Lead Beneficiary is responsible in front of the Managing Authority for the sound financial management of the project.
- 6) The Lead Beneficiary receives the amounts mentioned at paragraph 1 directly from the MA, and is responsible for transferring the amounts to each project beneficiary, according to the subsidy contract.
- 7) The Romanian beneficiaries receive the amounts mentioned at paragraph 2 directly from the MA, according to the co-financing contract.
- 8) Any modification of the project has to be agreed by all project beneficiaries, justified and submitted by the LB to the Joint Secretariat in a written form.

## **§ 5 Eligible Expenditures**

- 1) Activities and related costs for the project are eligible if they were contracted after the entry into force of the subsidy contract and before the end of the implementation period of the project and paid during 1 month after this period at the latest and provided they are necessary for the project and are stipulated in Annex 2 -“Budget of the project”.
- 2) As an exception from the above paragraph audit activities are eligible if implemented during one month after the end of the implementation period and paid during 1 month after this period at the latest and provided that they are necessary for the project and are stipulated in Annex 2 -“Budget of the project”.
- 3) The expenditures related to the project are eligible provided that they respect the applicable European and national legislation in force, that they are stipulated in Annex 12-“Budget of the project” and provided that they comply with the terms and conditions stipulated in the present contract.
- 4) As an exception from the provisions of paragraph 1, project preparation costs are eligible if they were incurred between 1<sup>st</sup> of January 2014 and the submission of the Application Form for Romanian beneficiaries and between 26.09.2014 and the submission of the Application Form for Serbian beneficiaries.
- 5) All preparation costs shall be requested for reimbursement in the first reimbursement claim, otherwise they will be considered non-eligible expenditure.

## **§ 6 Advance payment and reimbursement of the expenditures**

- 1) The Schedule for first level control requests and reimbursement claims of the project is provided in Annex 9.
- 2) The LB has the possibility to submit reimbursement claims to the MA at any

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

- given time for one or more project beneficiaries, provided that the reimbursement claim is not lower than 6,000 euro.
- 3) In case the total amounts requested for first level control verification are lower compared to the total amounts forecasted for the half of the implementation period in Annex 2, the MA may decide, after an analysis performed together with the NA, to reduce project funds, by reducing the original project budget and the corresponding IPA contribution, as follows:
- a) 5% reduction of the budget for the beneficiaries who have requested amounts for first level control lower than 75% of the initial amounts included in the schedule for first level control requests.
  - b) 10% reduction of the budget for the beneficiaries who have requested amounts for first level control less than 50% of the initial amounts included in the schedule for first level control requests.
- 4) In case of a decision on reduction of the project's budget, the Lead beneficiary shall submit to the MA a revised budget and a revised Annex 9, reflecting the reduction, within two weeks following the receipt of MA's notification. In case of failure to respect the deadline, the reduction shall be applied proportionally to all budgetary lines. The modification of the contract in case of reduction 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/beneficiary, and which becomes part of the contract.
- 5) The reduction shall be done without prejudice for beneficiaries' obligation to implement all the activities and achieve all the results, according to the approved application form.
- 6) In case of reduction, the Lead beneficiary together with the 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.
- 7) A first level control system has been established both in Romania and Serbia in order to check the expenditure made by the project beneficiaries from each country. Therefore, each beneficiary has the obligation to ensure that its expenditures are checked and validated by a controller from the state on whose territory it is located, before the reimbursement request is submitted.
- 8) The LB and its partners must present all documents needed for validation of expenditure via electronic system to the controllers and make sure that all beneficiaries present their documents, in order to be verified before drafting and forwarding the reimbursement claims.
- 9) In case of clarifications requested from any of the control bodies, the LB/project beneficiaries must answer in maximum 5 working days from the last clarification request. In case of failure to observe this deadline, the respective expenditure can only be included in the next reimbursement claim.
- 10) In case beneficiaries decide not to externalize activities, as foreseen in the approved Application Form, and decide to implement them "in house", without requesting the reimbursement of the respective amounts from the Programme, the project budget shall be reduced automatically with the respective amounts. To this end the beneficiaries have the obligation of informing the MA in due time, through the LB, regarding the decision taken and request the reduction of the budget. The reduction of budget shall take the form of a decision of the representative of the Managing Authority signing the contract, which will be notified to the LB/beneficiaries, and which becomes part of the contract.

11) The LB shall submit to Joint Secretariat (JS) the reimbursement claims, according to the schedule mentioned in Annex 9 and based on the conditions provided hereunder and in the applicable legislation.

12) The Reimbursement claims submitted by the LB shall contain only validated expenditure and shall be supported by the First Level Control Report issued by the Controllers of the Beneficiaries. The expenditures that were not validated by the controllers are deemed to be non-eligible for the programme and shall not be requested for reimbursement.

13) Every three months the LB shall submit consolidated progress reports to the JS, except for the last reporting period. The instructions presented in the reporting models must be followed exactly. All reports must be submitted in English.

14) Even if no expenditure was incurred, the progress report shall be submitted at the end of each reporting period to the JS via electronic system.

15) The final Progress Report and final Reimbursement Claim have to be submitted to the JS via electronic system at the latest within **five months** after the end date of the implementation period of the project. Not observing this deadline may result in not reimbursing the amounts.

16) 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 exchange rate differences are non-eligible expenditures for the project. The exchange rate risk is borne by the beneficiary concerned.

17) 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 via electronic system for verification to the first level controller. The LB transfers the received IPA 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 IPA amounts it receives. For the Serbian project beneficiaries: If Project beneficiary does not agree with the validated amount it has the possibility to submit an appeal to Managing Authority (MA) through the lead beneficiary. The MA will subsequently forward the appeal to the National Authority (NA) for an opinion. Commission is established by the NA for considering appeals against Serbian FLC decisions on ineligible expenditure (hereinafter "Appeals Commission"). The subject of appeal may not be expenditures declared by FLC as ineligible due to the lack of supporting documents.

The appeal must specify at least the following information: the identification data of the beneficiary submitting the appeal, the number of the financing contract and the title of the project, the e-MS code of the project, the purpose of the appeal, including the data regarding the documents and/or the public procurement procedures subject to appeal, the budgetary chapter in which the expenditure is enclosed, the amount contested, the motivation and justification of the appeal. The Head of NA shall draw up, based on the Commission's final minutes, an NA Conclusion on the relevant appeal; such Conclusions shall set out the NA's opinion and reasoning, as well as providing an overview of the steps taken to establish/confirm the facts in question. They shall be signed by the Head of the NA, registered as outgoing, and dispatched to the MA, with a copy to the Serbian FLC.



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

**The LB together with its partners may stipulate additional or more restrictive provisions than the ones stipulated below.**

### **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 will strive towards establishing with the beneficiaries the division of the responsibilities regarding the project, according to the present agreement.
- 2) The LB has the responsibility of implementing the project according to the provisions of the application form approved by the Joint Monitoring Committee and its annexes, of the Partnership Agreement (annexed to the present contract) and of the national and European legislation in force. The LB shall be responsible in front of the MA for the implementation of the obligations assumed in the 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 have complied with all legal requirements and that all necessary approvals for the proper implementation of the project have been obtained.
- 4) The LB ensures the implementation of the entire project and has to:
  - a. assume responsibility for ensuring implementation of the entire project;
  - b. ensure that expenditure presented by all beneficiaries has been incurred in implementing the project and corresponds to the activities agreed between all the project beneficiaries, and is in accordance with the provisions of the subsidy contract;
  - c. inform the MA, within 5 working days from the occurrence of such circumstances, if one of the disbursement conditions ceases to be fulfilled, or circumstances arise which entitle the MA to reduce payment or to demand repayment of the subsidy wholly or in part;
  - d. comply with the regulations referred to in the preamble to this contract as well as with relevant national and European legislation;
  - e. know and observe the provisions of the Applicant Guide and of the present subsidy contract.
  - f. observe and make sure that all beneficiaries observe the national and European legislation on state aid, equal opportunities, sustainable development, environmental protection;
  - g. make sure and satisfy itself that all beneficiaries make all expenditure according to the programme relevant public procurement rules;
  - h. ensure that all beneficiaries select the final beneficiaries of the projects (target groups) by a transparent procedure;

- i.
  - j. ensure that all changes regarding the partnership, activities or budget must have the approval of the Project's Steering Committee and of the MA/JS;
  - k. present and to ensure that the beneficiaries present their expenditures to the controllers for verification via electronic system at least 75 calendar days before the deadline for submitting the reimbursement claim, so that the deadline for submitting the reimbursement claim to the JS will be met. Requests for first level control not accompanied by appropriate supporting documents will not be taken into consideration.
  - l. ensure that all beneficiaries submit their contributions to the reimbursement claim at least 15 calendar days before the deadline for submitting the reimbursement claim to the JS;
  - m. ensure that all beneficiaries have a separate accounting system or an adequate accounting code for all transactions relating to the operation; the accounting system must be in line with the national legislation;
  - n. ensure that all beneficiaries have set at the level of their institution a set of anti-fraud measures;
  - o. observe and make sure that all beneficiaries observe the provisions from the Visual Identity Manual (published on the programme website [www.romania-serbia.net](http://www.romania-serbia.net)).
  - p. ensure that all the procurement procedures to be launched in the project, including those of the project beneficiaries will be transmitted to the JS to be published on the website of the programme;
  - q. accept to be included in the list of operations published on the programme website [www.romania-serbia.net](http://www.romania-serbia.net).
  - r. The LB makes sure that the first level controllers have verified the expenditure presented by the beneficiaries participating in the project.
- 5) When drafting the reimbursement claim, LB is liable towards the MA for consolidating the information from all beneficiaries requesting reimbursement of the expenditure, being responsible for collecting documents and information from every beneficiary. Irrespective of the time when reimbursement claims are submitted, LB submits every three months consolidated progress reports, except for the last reporting period, being responsible for collecting documents and information from every beneficiary regarding progress of activities/project.
- 6) LB is liable towards the MA for ensuring that all beneficiaries have a legal status, that they have the capacity to manage the project, that they observe the provisions from the Applicant's Guide. Moreover the LB is liable towards the MA for ensuring that beneficiaries fulfil their obligations regarding the implementation of the project. The LB is also liable towards the MA for all irregularities, even those committed by the beneficiaries.
- 7) The LB must answer all written requests from the MA, JS or other bodies involved in the implementation of the Programme within the deadline stipulated in the respective request. The LB is responsible for gathering the information from all beneficiaries in due time.
- 8) 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.

- 9) The LB must not receive or have received money from other Programmes for the same project. The LB ensures that the beneficiaries respect the same obligation.
- 10) 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/ or beneficiaries, as the case may be.
- 11) The LB must ensure that any beneficiary (including LB) cannot mortgage or impose any other form of bank guarantee on the goods purchased from the financing throughout the entire validity period of the contract.
- 12) By exception from the provisions of the previous paragraph, the Lead Beneficiary or any other beneficiary may mortgage or impose other form of bank guarantee on the capital asset/s that represent/s the subject of financing from the financing throughout the implementation period of the project, provided the value of the credit obtained does not exceed the total value of the beneficiary's budget.
- 13) The Lead Beneficiary has to inform the Managing Authority and present the following documents in maximum 10 working days from the signing of the contract:
  - a. The evaluation of the asset (if the asset was already delivered), performed by a bank or independent evaluator.
  - b. A copy of the contract or, in case of mortgage a copy of the documents related to the registration of the mortgage in the relevant public registers.
- 14) The Managing Authority reserves the right not to agree with the mortgage or with other form of bank guarantee.
- 15) In case the bank/institution where the credit was obtained imposes on the project beneficiary to use its own account, then all the expenditures related to the project implementation must be performed from the respective account.
- 16) 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 1303/2013 if within 5 years of the final payment 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.
- 17) The Lead Beneficiary understands and agrees that the MA has delegated tasks to the JS, according to the Implementing Agreement concluded between the MA and the JS and therefore the Lead Beneficiary agrees to cooperate with the JS in the same way as with the MA.

18) In duly justified cases, not imputable to the beneficiaries, when project beneficiaries are in impossibility of fulfilling their 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 beneficiaries. The beneficiaries requesting the suspension of the implementation period has the obligation to inform MA in maximum 3 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 beneficiaries.

19) As an exception to the previous paragraph, when the suspension of the contract could harm another beneficiary unaffected by the situation which would justify the suspension, by stopping his activities, LB, with previous agreement of all beneficiaries, may submit a request for prolongation of the implementation period for a period equal to the one for which the suspension would have been necessary, observing the Programme's provisions.

20) If the MA demands repayment of the IPA in accordance with this contract, the LB is liable to the MA for the total IPA that has been reimbursed to him.

21) The LB is at all times obliged to retain for audit purposes all files, documents and data about the project on customary data storage media in a safe and orderly manner. The LB guarantees that all beneficiaries fulfil this duty.

22) 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 after the official closure of the Interreg IPA CBC Romania-Serbia, the LB has the obligation to preserve and to present, to the Joint Secretariat (within the Regional Office for Cross-Border Cooperation Timișoara, Romania), MA, Certifying Authority (within the Romanian Ministry of Regional Development and Public Administration), Audit Authority (within the Romanian Court of Accounts), European Commission (EC), European Court of Auditors and any other body designated to perform controls on the use of the financing, all project 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.

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 beneficiaries fulfil this obligation.

24) In case of lack of available funds at Programme level, the beneficiary has the obligation of ensuring from its own budget the necessary funds for implementing the operation according to the approved Application Form, the present contract and the national and European legislation in force. The MA shall notify the LB/ beneficiary regarding the lack of available funds.

25) 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.

26) 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.

27) 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 (Annex 15).

28) The LB, after signing of the subsidy contract, will properly inform the beneficiaries regarding the annexes to be part of the present agreement: Annex 2: Budget of the project, Annex 3: Approved application form, Annex 5: Applicant's Guide, Annex 6: Public procurement procedure, Annex 7: List of eligible expenditures, Annex 8: Monitoring Measures, Annex 9: Schedule for first level control requests and reimbursement claims, Annex 11: Reimbursement claim template, Annex 12: Progress report template, Annex 14: First Level Control manual, Annex 15: Sustainability report.

#### **B. Beneficiaries (including the Lead Beneficiary where applicable)**

- 1) Implements the part of the project for which it is responsible, in due time, according to the descriptions of the (individual components) Application Form approved by the Joint Monitoring Committee and other documents agreed between the MA and the LB.
- 2) The beneficiary has the responsibility of implementing the project according to the provisions of the present agreement of the national and European legislation in force.
- 3) Notifies the Lead Beneficiary regarding any situation that may lead to the temporary or permanent impossibility or to any other drawback in the implementation of the project in maximum 3 days from the event causing the impossibility.
- 4) Do the utmost to obtain the necessary approvals, agreements and construction authorizations within 6 months from the signing of subsidy contract.
- 5) Observe the national and European legislation in general and especially on public procurement, state aid, equal opportunities, sustainable development, environmental protection.
- 6) Is responsible for its budget up to the amount it participates in the project.
- 7) Shall maintain a proper analytical accounting system and separate bank accounts for the project.
- 8) Supports the lead beneficiary in drawing up progress reports and the final report by providing the required data on time; drafts and submits to the Lead Beneficiary all necessary data for the reimbursement claims.
- 9) The beneficiaries have the obligation to respond to any request of the Lead Beneficiary in the deadline stipulated in the respective requests.
- 10) Each beneficiary is responsible for uploading in the electronic system the accounting reports and any other documents, including copies of each supporting document (bills, documents related to the procurement procedure, banking declarations etc.) in due time and signed by the legal representative of the beneficiary, bearing the mentions "according to the original" and also the

project code.

- 11) The beneficiaries must present the documents related to the expenditures to the first level control with 75 calendar days prior to the deadline for submitting a reimbursement claim, according to the spending forecast
- 12) The Beneficiary cannot mortgage or impose any other form of bank guarantee on the goods purchased from the financing throughout the implementation period of the project and 5 years after the final payment.
- 13) By exception from the provisions of the previous paragraph, the beneficiary may mortgage or impose other form of bank guarantee on the capital asset/s that represent/s the subject of financing from the financing throughout the implementation period of the project, if the following conditions are observed:
  - a. All the other beneficiaries agreed;
  - b. MA previously approved the intention of mortgage or imposing other form of bank guarantee
  - c. The value of the credit obtained does not exceed the total value of the beneficiary's budget
- 14) In order to obtain the MA agreement mentioned at paragraph 13 b), the beneficiaries, via the Lead Beneficiary has to present the following documents:
  - a. Request of approval for the intention of mortgage or imposing other form of bank guarantee (including the value of the credit that it is going to be obtained)
  - b. The evaluation of the asset (if the asset was already delivered), performed by a bank or independent evaluator.
- 15) In case the abovementioned conditions are not observed, the MA approval shall not be granted.
- 16) In case the MA approval is granted, the beneficiary via the Lead Beneficiary shall present a copy of the contract in maximum 10 working days from their signing. In case of mortgage, also a copy of the documents related to the registration of the mortgage in the relevant public registers shall be presented.
- 17) In case the bank/institution where the credit was obtained imposes on the beneficiary to use its own account, then all the expenditures related to the project implementation must be performed from the respective account.
- 18) Each beneficiary must submit to the Lead Beneficiary any documents necessary for drafting specific documents requested by the MA/JS or other implementing bodies of the programme.
- 19) The beneficiary will produce all documents required for the audit, control or evaluation, provide necessary information and give access to its business premises. The lead beneficiary and the beneficiary are at all times obliged to retain for audit and control purposes all files, documents and data about the project for 3 years after the official closure of the Interreg IPA CBC Romania-Serbia . The documents must be properly archived. Also, the MA must be informed on the location of these documents.
- 20) The beneficiaries must implement the measures included in the action plan, at the stipulated deadlines, set by the Lead Beneficiary/MA/JS, according to the recommendations resulted from the audit missions of the European Commission,

Audit Authority or other empowered audit and control bodies.

- 21) All beneficiaries understand that the Managing Authority (MA) and the National Authority (NA) are entitled to verify and to control the proper use of funds by the LB or by beneficiaries. The verifications to be carried out by the Managing Authority/National Authority shall cover administrative, financial, technical and physical aspects of projects, as appropriate. The MA and NA shall be responsible for the control of the proper use of funds by the LB or by beneficiaries, by preventing, detecting and correcting irregularities and recovering amounts unduly paid together with interest on late payments where appropriate.
- 22) The beneficiaries understand and agree that the MA may delegate tasks to the JS, therefore JS may act in the name and on behalf of MA.
- 23) In case an irregularity is discovered, the beneficiary is responsible to reimburse the IPA amounts affected by the irregularity to the Lead Beneficiary, even if the irregularity was committed by a sub-contractor, in 20 days from notification; starting the 21st day the Lead Beneficiary may request delay 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.
- 24) Any extra payment done by the Lead Beneficiary to a beneficiary is considered unduly paid amount, and the beneficiary has to repay the respective amounts in 30 days from the receiving date of the notification from the Lead Beneficiary.
- 25) In case the unduly paid amounts are not reimbursed to the Lead Beneficiary in due time, the beneficiary has to pay delay 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. The penalties are calculated to the value that has to be recovered.
- 26) The bank charges resulted from reimbursing the unduly paid amounts are borne exclusively by the beneficiary making the reimbursement.
- 27) Each beneficiary, including the Lead Beneficiary, shall be responsible to the other beneficiaries and shall pay for the damages resulted from not observing the tasks and obligations established by the present agreement and its annexes.
- 28) Each beneficiary is responsible for the damages caused to third parties from its own fault during the implementation of the project.
- 29) Participates at the setting up of the Joint Steering Committee of the Project and at drafting its rules of procedure.
- 30) In case of clarifications requested from any of the control bodies, the project beneficiaries must answer in maximum 5 working days. In case of failure to observe this deadline, the respective expenditure can only be included in the next reimbursement claim.

## **§ 8 Joint Steering Committee of the Project**

- 1) The parties shall set up a Joint Steering Committee of the Project, made up of representatives of all beneficiaries, which shall supervise the proper implementation of the project and perform any other tasks stipulated in the rules of procedure for this committee.
- 2) The Lead Beneficiary is responsible for setting up the Joint Steering Committee

of the Project before the first reimbursement claim is submitted.

- 3) The tasks of the Joint Steering Committee of the Project shall be established through the Rules of Procedure of this Committee and shall automatically include the tasks stipulated in this agreement:
  - a. settle any dispute between beneficiaries;
  - b. preparing the list with members of the arbitration court;
  - c. terminating the partnership agreement.

## **§ 9 Publicity**

- 1) The Lead Beneficiary must inform and must ensure that all beneficiaries inform the public, by means of the measures laid down in Annex XII of Regulation (EU) no. 1303/2013, about the assistance obtained from the Funds.
- 2) The Lead Beneficiary and all beneficiaries are responsible for the implementation of the information and publicity activities related to the non-reimbursable financial assistance received through the programme.
- 3) The Lead Beneficiary must ensure and must satisfy itself that all beneficiaries ensure transparency and accurate information to the mass media on the projects financed under the Programme.
- 4) All information and publicity actions developed by the beneficiaries (including the Lead Beneficiary) must observe the Visual Identity Manual (available on the programme website: [www.romania-serbia.net](http://www.romania-serbia.net) or on request at the Joint Secretariat).
- 5) The rules stipulated in the Visual Identity Manual are mandatory for the Lead Beneficiary and all beneficiaries. The publications edited within a project financed under the Programme shall include the name of the project and reference to the EU co-financing of the Programme, on the first and the last cover. The publications shall also contain contacts (persons, institution/organization, phone, fax, email and postal address) for the persons interested in finding out further details. The responsibility for the content of materials belongs solely to the beneficiary.
- 6) For all information and publicity actions developed by the 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).
- 7) 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 IPA.
- 8) 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.
- 9) The LB 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.

## **§ 10 Confidentiality**

1) With the exception of the situations foreseen at art. 7 A, para. 22, 7 B. para.19 and art. 9, the Managing Authority and the Lead Beneficiary undertake to preserve the confidentiality of any document, information or other material communicated to them in confidence until at least five years from the official closure of the Programme. The release of information to persons involved in implementing/ verifying/ controlling/ auditing the project shall be performed on confidential basis and shall cover the information that is necessary for implementing the project.

2) The data used for publicity purposes, for informing on and promoting the use of IPA II funds, shall not be considered as having confidential status.

3) The Managing Authority has the right to release information regarding the project on request by public institutions, investigating the project.

4) The contracting party shall bare no responsibility for releasing information on the contract if:

- a. the information was released with the written agreement of the other contracting party; or
- b. the contracting party was legally forced to release the information.

5) Failing to observe the confidentiality obligation gives the damaged party the right to claim compensations from the damaging party.

## **§ 11 Conflict of interests**

1) In the present Contract, the conflict of interests represents any circumstances that have affected or may affect the execution of the contract by the parties in an objective and impartial manner. Such circumstances may result from reasons involving family, emotional life, economic interests, political or national affinities or any other shared interest with the recipient.

2) The parties take upon themselves to take all necessary measures in order to avoid any conflict of interests and to keep each other informed, in up to 5 (five) days from finding out, on any circumstances that have generated or may generate such a conflict. 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.

## **§12 Irregularities and repayment of the funding**

1) "Irregularity" according to the current Agreement means any breach of Union law, or of national law relating to its application, resulting from an act or omission

by LB, Beneficiaries or an economic operator involved in the implementation of the IPA Funds, which has, or would have, the effect of prejudicing the budget of the Union or the national budgets by charging an unjustified item of expenditure to the budget of the Union or the budgets these manage in their name and/or the budgets granting the related co-financing..

2) MA shall show zero tolerance to any suspected cases of fraud and shall take all necessary measures to prevent and correct such cases.

3) 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.

4) MA may suspend or terminate the contract in case the beneficiaries fail to take the measures imposed.

5) 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 beneficiaries.

6) 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.

7) In case the contract shall be terminated, the MA notifies the LB regarding this decision and the related financial measures. In this case, within 30 days from receiving such notification, the LB and / or beneficiaries shall fully return the amounts specified in the notification, without deducting any bank charges.

8) For the irregularities committed by a beneficiary, the LB is entitled to request these amounts from the responsible beneficiary in order to be repaid 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.

9) If the Lead Beneficiary does not manage to recover the unduly paid IPA contribution from the beneficiaries, it will inform the MA and will send all necessary documents for the MA to be able to take all necessary measures stipulated by the legislation in force.

10) Any extra payment done by the MA is considered unduly paid amount, and the LB has to repay the respective amounts within 30 days from the receipt date of such notification from the MA.

11) In case the irregularity is discovered before the final payment, the MA is entitled to diminish the reimbursed amount starting with the next payment until the total recovery of the debt, to which the bank charges are added.

12) 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 days as of the receiving date of the notification, the amount, including bank charges.

13) The final payment will be made only after the recovery of any known debts from the lead beneficiary and/or any other beneficiary of the project.

14) In duly justified cases and based on a statement given by the LB in which he takes the responsibility to transfer the debt amount to the MA in 5 days from the date the final payment is paid by MA, the MA can transfer the amounts related to

the final reimbursement claim.

15) Starting with the 31st day as of the expiry of the deadlines stipulated at paragraphs 7,10,12 an interest rate bigger with one and a half points 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.

16) In case the European Commission applies financial corrections to the Programme on the basis of extrapolation or flat rate, the Managing Authority may decide to cover these corrections from the projects' budgets, concerned by the corrections.

17) In case of observations and/or reservations raised by the Commission on the description of the Management and Control System of the Programme or in case of a system error detected, the MA has the right to temporarily withhold payments to a particular partner (LB or P) 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.

18) In the Republic of Serbia, all potential irregularities that have been detected are to be firstly reported to the National Authority that executes the procedure for examining the irregularity and takes the final decision, closes the irregularity case and reports to the relevant bodies, in line with the internal procedure.

### **§ 13 Disputes between beneficiaries**

1) Should any dispute arise between lead beneficiary and/or any other beneficiary, each beneficiary shall be obliged to submit the dispute to the Project Steering Committee in order to reach a settlement.

2) Should the Project Steering Committee fail to reach a compromise, lead beneficiary and/or any other beneficiary shall be obliged to request and accept arbitration carried out by an ad-hoc arbitration court. This will consist of two people of both nationalities, appointed by the Project Steering Committee from the list of persons nominated beforehand. Should this committee fail to designate all the expert arbitrators within one month from the Lead Beneficiary's request, the Lead Beneficiary shall have the authority to appoint both expert arbitrators.

3) Lead beneficiary and/or any other beneficiary shall be obliged to accept and apply the decisions of the arbitration court, subject to the applicable law hereby agreed upon and in compliance with the provisions of the Community law.

4) Any dispute that, from any reason, fails to be solved by the Project Steering Committee and which involves the Lead Beneficiary shall be governed by the law applicable to the Lead Beneficiary, while, if the Lead Beneficiary does not take part in the dispute, the applicable law is the one of the petitioner.

### **§ 14 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 beneficiaries or arrange for such an audit to be carried out by authorized persons.

3) The MA is entitled to verify and to control the proper use of funds by the LB or by its 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 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 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/two years from 31 December following the submission of the accounts in which the expenditure of the project is included. 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 beneficiaries fulfil the duties stipulated above.

7) The LB and its project beneficiaries must implement the recommendations received after an audit control, otherwise the MA has the right to terminate the contract.

### **§ 15 Assignment, legal succession**

1) The Lead Beneficiary and/or any other beneficiary of the project cannot renounce totally or partially the rights and obligations resulted from the present contract unless it has the clear agreement of the Project Steering Committee.

2) In case of legal succession, e.g. where the LB and/or any other beneficiary of the project changes its legal form, the LB and/or any other beneficiary of the project is obliged to transfer all duties under this contract to the legal successor. The LB and/or any other beneficiary of the project shall notify the MA about any change with 15 working days beforehand.

### **§ 16 Amendment of the agreement**

1) Any modification to the present agreement shall be with the agreement of all parties and takes the form of an addendum to the present agreement.

2) As an exception from the provisions of paragraph 1, the beneficiary may make the following changes, with the notification of the other beneficiaries:

- i. change of headquarter may be done and shall be forwarded to the MA within 15 days following the change of Address.

- ii. material errors in the text of the agreement
- 3) Addenda enter into force the day of the signature by the last party, except the case when the addendum confirms modifications occurred in the national/European applicable legislation with impact on the implementation of the present agreement, modifications that become effective from the date the respective legal acts enter into force.

### **§ 17 Working language**

- 1) The working language shall be..... (according to the decision of the beneficiaries).
- 2) Any official internal document of the project shall be made available in the language of the subsidy contract.

### **§ 18 Termination of the agreement**

- 1) Any breach of the provisions of the present Agreement may result in the termination of the present Agreement and in decommitment of financing and repayment of amounts unduly paid.
- 2) The termination of the subsidy contract is possible only with prior approval of the MA or of the Joint Monitoring Committee, according to each case.
- 3) The Agreement is terminated, by decision of the Project Steering Committee, at the proposal of a beneficiary, without any other delay or formality, the beneficiary being obliged to repay to the Lead Beneficiary the amounts already received, in whole, for the following cases, but not limited to these:
  - a. an inconstancy between the reality and the declarations of the beneficiary in the application form is found, regarding the financing of the project from national or European public funds, or regarding the financing from other national or European programmes;
  - b. the subsidy awarded has been partially or entirely misapplied for other purposes than those agreed upon, including 5 years after the final payment;
  - c. insolvency proceedings are instituted against the assets of a beneficiary or insolvency proceedings are dismissed due to lack of assets for cost recovery, provided that this appears to prevent or risk the implementation of the project;
  - d. a beneficiary closes down;
  - e. In case of projects comprising investment in infrastructure or productive investment, the MA finds that during the implementation period of the project including 5 years after the final payment, the LB or any beneficiary are subject to any of the following:
    - A cessation or relocation of a productive activity outside the programme area;
    - A change in ownership of an item of infrastructure which gives to a

firm or public body an undue advantage;

- a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives;

For the abovementioned cases, the recovery of the amounts shall be done according to the art.71 of EC Regulation 1303/2013.

f. The LB fails to observe the provisions of article 7 A paragraphs 12-15 of the present Agreement;

g. The beneficiaries fail to observe the provisions of the art. 7 B paragraphs 12-14 of the present Agreement;

h. in case the project is no longer eligible, if during its implementation such modifications appear that affect the implementation conditions/ create for a third party an unjustified advantage, or if the modification is the result of a change in the nature of the property/ ceasing/ change of the location of the investment;

i. a beneficiary did not notify the Lead Beneficiary in due time on a case of conflict of interests or the necessary measures for ending such a situation were not taken;

j. the beneficiary did not start the implementation of the project according to the provisions of the approved Application Form;

4) The Joint Steering Committee of the project, at the proposal of a beneficiary, has the right to terminate this Agreement 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 beneficiary has failed to submit in the deadlines the required reports or proofs, or to supply necessary information, in the deadline and has not duly justified these delays; or

c. the beneficiary has impeded or prevented the auditing; or the recommendations resulted from the audit missions have not been observed; or

d. a fraud is discovered at beneficiary level; or

e. the beneficiary has failed to fulfill any other conditions or requirements stipulated in this agreement.

## **§ 19 Force majeure and fortuitous event**

1) Force majeure is any external even considered unforeseeable, absolutely invincible and inevitable, occurred after the conclusion of the present agreement that prevents a party from performing any of its obligations. Force majeure, established under the law, exonerates the party in case of failure of performing the obligations under this Agreement, in whole or in part, as long as they act only if the other party has been duly notified. It is not considered force majeure any event similar to those above which, without creating an impossibility of execution, determines one or the other party to perform its



obligations with extremely high costs.

- 2) The party invoking force majeure shall notify the other party of the force majeure event, within five days from the date when the event occurred. The party invoking force majeure has the obligation to send to the other party the document stating the existence of force majeure, within 15 (fifteen) 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 five (5) calendar days from its termination/it ceased to exist.
- 3) The responsible party will support all costs of the notification procedure.
- 4) The parties shall endeavour to take all necessary measures/to perform all necessary actions at in order to limit the consequences of Force Majeure.
- 5) If the party invoking the force majeure does not properly notifies the commencement and termination of the force majeure, the terms and conditions laid down in the present agreement will not be exempted from its responsibility and will be held responsible for any loss caused by the lack of notice to the other party. The responsible party will support all related costs (if any) if the notification procedure is not observed.
- 6) The execution of the agreement is suspended during the period of “force majeure” for the period the event exists.
- 7) In case the agreement must be suspended from this reason on a period longer than three months, the Parties will meet within a period not exceeding ten (10) days after the three months period expires, to agree on how to continue, modify or terminate the Agreement.
- 8) Fortuitous case does not exonerates the parties of their obligations foreseen in the contract.

## **§ 20 Correspondence**

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

## **§ 21 Transparency**

1. The present agreement, including its annexes, together with the information and documents regarding its implementation represent public information according, respecting the exceptions foreseen by law and of those established by the present contract.
2. The following elements, as they are in the present agreement and its annexes, including addenda, if the case, cannot be considered confidential:
  - a) The name of the project, full name of the beneficiary and of the partners, commencement and end date, contact information - at least an email address and a phone number - functional for the project team, place of implementation of the project - town, county, region and, if the projects implements activities which are addressed to the public, the exact address and contact details for spaces dedicated to these activities in the project;
  - b) Total value of the non-refundable financing, the intensity of support expressed both as a concrete amount, and as a percentage of total eligible project cost and the amount of payments done;
  - c) The dimension and characteristics of the target group and, case by case, the final beneficiaries of the project;
  - d) Information regarding the human resources of the project, namely: name, position, working time;
  - e) The estimated results of the project and the ones already achieved, including the ones corresponding to the objectives, as well as the ones corresponding to the activities, addressing the indicators established;
  - f) Name of the suppliers, services providers and works enterprises contracted within the projects, as well as the object of the contract, its value and the amount of payments done
  - g) Elements regarding the sustainability of the projects results and the durability of the infrastructure or productive investments - information provided according to the contract and according to art.71 of EC Regulation 1303/2013.

## **§ 22 Protection of personal data**

1. Personal data, as defined by Directive (EU) 680/2016, namely any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity, collected in the project are used in order to meet project objectives, for statistic purposes, considering the provisions of the applicable legislation.
2. Personal data of the target groups and, case by case, of the final beneficiaries of the project, cannot be processed or published, for public information, without previously informing them about the purpose of processing or publication thereof and obtaining their consent, considering the provisions of the applicable legislation.

### **§ 23 Data communication**

1. The Lead Beneficiary and/or any other beneficiary agree that the documents and information mentioned in art.17, para. (2) referring to transparency will be published by the MA/JS, in case the programme authorities receive a request in this sense, observing the provisions of the contract.

### **§ 24 Applicable law**

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

### **§ 25 Signatures**

- 1) The present agreement is concluded in ... originals. Each copy must be countersigned by every beneficiary.

#### **Lead Beneficiary**

**Legal representative:**

**Name:**

**Signature**

**Date**

#### **Beneficiary 2**

**Legal representative:**

**Name:**

**Signature**

**Date**

#### **Beneficiary 3**

**Legal representative:**

**Name:**

**Signature:**

**Date:**