 

**Programe funded by**

**the European Union**

**GRANT CONTRACT**

**- from ENI CBC-**

**<***Grant contract identification number>*

(the “Contract”)

**The following grant contract between**

Ministry of Regional Development, Public Administration and European Funds

16 Libertatii Street, Bucharest, Romania, postal code 050741, fiscal code 26369185

acting as the Managing Authority for theRomania-Ukraine Joint Operational Programme 2014-2020, ("the MA"), represented by …., Minister

of the one part,

<Full official name of the Lead Beneficiary>

[<Legal status (organisation)>]

<Full official address>

**[**VAT number, for VAT registered beneficiaries or registration number**]**, acting as Lead Beneficiary, represented by [name of legal representative], [title]

("the Lead Beneficiary")

of the other part,

is concluded having as non-exhaustive legal basis:

* EU Regulation no. 232/2014 establishing a European Neighbourhood Instrument including all subsequent modifications and additions;
* 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 including all subsequent modifications and additions;
* 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 including all subsequent modifications and additions including all subsequent modifications and additions;
* Commission Implementing Decision of 17.12.2015 approving the Joint Operational Programme including all subsequent modifications and additions;
* 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, including all subsequent modifications and additions;
* 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 including all subsequent modifications and additions.

**Article 1 - Purpose of the Contract. General provisions.**

1.1 The purpose of this Contract is the award of an ENI CBC grant by the MA for the implementation of the project entitled: <*title of the project>* ("the project") described in Annex I.

1.2 The Contract is signed in accordance with the decision of the Joint Monitoring Committee of the Romania - Ukraine Joint Operational Programme 2014-2020 from <*date/month/year*> to award a grant to the project.

1.3 The Lead Beneficiary shall be awarded the ENI grant on the terms and conditions set out in this Contract and its annexes, which the Lead Beneficiary hereby declares it has noted and accepted.

1.4 The Lead Beneficiary accepts the ENI grant and assumes responsibility for ensuring the technical and financial implementation of the entire project.

1.5 The Lead Beneficiary shall implement the project jointly with the Beneficiaries with the requisite care, transparency and diligence, in line with the principles of sound financial management[[1]](#footnote-1) and with the best practices in the field. The Lead Beneficiary and the Beneficiaries shall mobilise all the financial, human and material resources required for its implementation.

The Lead Beneficiary and Beneficiaries shall implement all measures in order to achieve the project objectives and results, and to ensure its relevance, efficiency, effectiveness, impact and sustainability, including, *inter alia*, the involvement of all the necessary stakeholders.

1.6 In case the project is not finalized during the implementation period as defined by Article 2.3 and depending on the categhory of non-achieved indicators (eg. indicators contributing to the ones included in the Programme/indicators affecting the achievement of the projects’ objectives), the Lead Beneficiary and the Beneficiaries shall ensure funds from their own resources outside the project budget to finalize the project within a timeframe established between the Parties. The decision regarding the closure of the project will be taken in accordance with the relevant instructions/guidelines/manuals, which the Lead Beneficiary and Beneficiaries are obliged to observe.

1.7 The Lead Beneficiary receives the ENI Grant from the MA and ensures it is managed and distributed in accordance with the grant Contract and its annexes.

1.8 The Lead Beneficiary and the MA are the only parties (the “Parties”) to this Contract. The European Commission is not the Contracting Authority and it is not Party to this Contract being conferred only the rights and obligations explicitly mentioned in this Contract.

1.9 This Contract and the payments attached to it shall not be assigned to a third-party in any manner whatsoever.

1.10 Any personal data will be processed solely for the purposes of the performance, management, control and monitoring of this Contract by the MA and may also be passed to the bodies charged with monitoring, inspection or control tasks according to Article 33 of the 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 including all subsequent modifications and additions (“Regulation no 897/2014”) or any bodies/entities authorised by the MA. The Lead Beneficiary and the Beneficiaries will have the right of access to their personal data and the right to rectify any such data. If the Lead Beneficiary and the Beneficiaries have any queries concerning the processing of personal data, they shall address them to the MA.

1.11 The Lead Beneficiary and the Beneficiaries shall limit access and use of personal data to that strictly necessary for the performance, management and monitoring 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.

1.12 The Lead Beneficiary and the Beneficiaries understand and agree that the MA may delegate tasks related to monitoring of the project implementation to the Joint Technical Secretariat of the Programme (“the JTS”). The Lead Beneficiary and the Beneficiaries must answer all written requests from the MA/JTS, within the deadline stipulated in the respective request and must also support the MA/JTS in fulfilling their tasks, including on-site visits and other tasks related to the monitoring, evaluation and implementation of the Programme and the project.

1.13 The Lead Beneficiary and the Beneficiaries understand and agree that, for the sound implementation of the Contract and of the Programme, the MA, either directly or through the JTS, may issue mandatory instructions, guidelines, and manuals in line with the provisions of the Contract.

1.14 The Lead Beneficiary and the Beneficiaries must use for the verification of expenditure the control system established at national level.

1.15 The Lead Beneficiary and the Beneficiaries shall ensure the necessary IT equipment and proper internet connection in order to communicate with the Programme in a proper manner.

The Lead Beneficiary and the Beneficiaries shall upload data in the electronic system of the Programme in accordance with the MA/ JTS instructions.

1.16 All references to days in this grant Contract are to calendar days, except when it is not specified otherwise.

1.17 The Lead Beneficiary understands and agrees that the MA may set up a Steering Committee comprising, inter alia, members of the MA, JTS, National Authorities and Beneficiaries. The Lead Beneficiary and Beneficiaries understand and agree that the Steering Committee may issue recommendations for the sound implementation of the grant contract. Moreover, the Lead Beneficiary and Beneficiaries understand and agree to nominate at least one person to participate at the Steering Committee meetings upon the MA/JTS request. The MA/JTS will ensure that the Steering Committee recommendations are in line with the contract provisions (provision *available only for LIPs, hard projects, and soft projects with an infrastructure component*).

1.18 Substantial error means any breach of the contractual provisions which significantly affects its implementation and may determine the MA to suspend the Contract, payments or time-limit for a payment, or terminate the Contract. Substantial errors are mainly related, without being limited to, articles 1.5, 1.9, 1.13, 1.15, 4.3, 4.13, 5.2 to 5.6, 6.1, 9.1 to 9.3 and 9.5, 10.1 to 10.4, 11.2 to 11.9, 13.1 to 13.4, 14.1, 15.3 to 15.4, and 20.4.

**Article 2 - Duration of the grant contract**

2.1 The Contract shall enter into force on the date when the last of the two Parties signs.

2.2 Implementation of the project shall begin on the day following that on which the last of the two Parties signs.

2.3 The project's implementation period, as laid down in Annex I, is <number of months> months.

2.4 The execution period of this Contract will end at the moment when final payment is made by the MA and in any case at the latest 18 months as from the end of the implementation period as stipulated in art 2.3 above, unless postponed in accordance with Article 4.13 of the Contract.

2.5 The validity period of this Contract shall end five years from the date of payment of the balance for the programme. The MA shall inform the Lead Beneficiary about the date of payment of the balance for the programme.

**Article 3 - Project budget**

3.1 The total eligible cost of the project is estimated at <... ........EURO >, as set out in Annex II.

3.2 The MA undertakes to finance a maximum of <... .....EURO >, equivalent to <*enter applicable percentage, maximum 90%* > of the estimated total eligible cost of the project; the final amount of the eligible costs shall be established in accordance with Articles 8 and 12.

3.3 Pursuant to Article 8.3, <…>% *(maximum 7%)* of the final amount of direct eligible costs of the project established in accordance with Articles 8 and 12, excluding costs incurred in relation to the provision of infrastructure, may be claimed as indirect costs without increasing the amount specified in article 3.2.

3.4 Pursuant to Article 8.5, a contingency reserve not exceeding <…>% (*maximum 10% of the costs related to the provision of infrastructure*), may be included in the Budget for the project. It can be used only for the respective infrastructure and with the prior written authorization of the MA. (*provision available* *only for LIPs, hard projects and soft projects with an infrastructure component*)

3.5¹ Costs incurred prior to contract signature related to studies, technical documentation, consents, approvals, authorizations and agreements which contribute to project preparation, will amount at maximum *<…>* EURO, calculated at the rate published in InforEuro for the month during which the expenditure is submitted for examination according to Article 4. The cost of technical documentation(s) should not go over 10% of the costs related to the provision of infrastructure *(provision available only for LIPs, hard projects and soft projects with an infrastructure component)*

3.5² Costs for travel and subsistence of staff employed by the Lead Beneficiary or the Beneficiaries, incurred after the publication of the call for proposals and prior to Contract signature, which contributed to project preparation, will amount at maximum <*…*> EUR, calculated at the rate published in InforEuro for the month during which the expenditure is submitted for examination according to Article 4. (*provision available only* *for hard projects, soft* *projects with an infrastructure component and soft projects*)

3.6 Costs specified at Articles 3.51 and/or 3.52 (*as applicable)* will be included in the financial reports and in the payment requests according to Articles 8 and 12 of the Contract, and verified as provided in Article 4.

3.7 The total budget used by Beneficiaries, other than the Lead Beneficiary, located outside the core regions of the Programme, as well as for activities implemented outside the core regions of the programme by any Beneficiary, including the Lead Beneficiary, may not exceed 10% of the budget as established according to Articles 8 and 12.

**Article 4 - Payment arrangements**

4.1 Payment will be made by the MA as follows:

**[Option 1: Projects with an implementation period not exceeding 12 months or where the grant does not exceed EUR 100 000**

* Pre-financing instalment: <... ........EURO > (70% of the ENI Grant foreseen for the implementation of the project as set out in Annex II)
* Final balance (after the approval of the final report): <... ........EURO > (maximum 30% or the balance of the ENI Grant foreseen at Article 3.2 of the Contract)

**[Option 2: Projects with an implementation period of more than 12 months and where the grant is more than EUR 100 000**

* Pre-financing instalment: <... ........EURO> (80% of the ENI Grant foreseen for the first 12 months of implementation of the project as set out in Annex II). The grant for the first 12 months will be calculated by applying the percentage set out in Article 3.2 to the total budget estimated for the first 12 months.
* Interim instalment: <... ........EURO> (subject to provisions of Article 5.5)
* Final balance: <... ........EURO > (maximum 10% or the balance of the ENI Grant foreseen at Article 3.2 of the Contract, subject to provisions of Article 5.5)

1. The total sum of prefinancing and interim payments may not exceed 90% of the amount referred to in Article 3.2.
2. In case of projects including infrastructure, the Lead Beneficiary must submit within 6 months from the start date of implementation, but no later than submission of the interim payment request, the feasibility study(ies) or equivalent, the building permit(s) and any other execution details, consents, approvals, authorizations and agreements, in English translation, as photocopies certified “According to the original”, if requested by the national laws of the respective country and mandatory to begin execution of the infrastructure. (*provision available only for soft projects with an infrastructure component and LIPs-where the case may be*)

In the absence of the documents mentioned in Article 4.3, the payment of the interim instalment will not be made and the Contract may be terminated in accordance with Article 17. ( *provision available only for soft projects with an infrastructure component and LIPs-where the case may be*)

1. The Lead Beneficiary shall transfer the corresponding amounts of the Grant to the Beneficiaries without delay as from the date of receipt of the instalment of Grant, proportionally to each Beneficiary’s contribution to the project, in accordance with the provisions of the Contract and the Partnership Agreement, without making any deduction, retention or further specific charge, and shall submit the proof of transfer to the MA within 7 days from the date of the transfer.
2. No amount shall be deducted or withheld by the MA, unless supported by the signed Contract, and no specific charge or other charge with equivalent effect shall be levied reducing these payments.
3. If exceptional circumstances occur, the MA may retain the payment to the Lead Beneficiary or request the Lead Beneficiary to retain the payments to the Beneficiaries.
4. If the Lead Beneficiary considers that the transfer should not be done to one or more Beneficiaries, either because the EU funds could be jeopardized, or because the contract was/is breached by the Beneficiary/Beneficiaries concerned, it shall consult the MA accordingly.
5. The MA shall make each payment under the condition of availability of funds.

**Payment request**

1. The payment request shall be drafted by the Lead Beneficiary using the model in Annex IV, based on the individual payment requests made by the Beneficiaries. The interim and the final payment request shall be accompanied by:
2. Consolidated narrative report
3. Consolidated and individual financial reports in line with Article 5;
4. Consolidated and individual expenditure verification reports in line with Article 4.9.
5. an updated budget cashflow for the following reporting period in case of request of further pre-financing;

**Expenditure verification reports**

1. A report on the verification of the project’s expenditure, conforming to the instructions of the MA according to Article 1.12, produced by a controller appointed in accordance with the control system established at national level, shall be attached to:

* any request for interim payment;
* any final report.

The Lead Beneficiary will submit to the MA/JTS the consolidated expenditure verification report comprising all the factual findings from the controllers.

Based on the technical and financial reports drafted by the Lead Beneficiary and the Beneficiaries, and the corresponding evidence, each controller verifies whether the costs declared are eligible including necessary for the implementation of the project, in accordance with the Contract provisions, as well as the revenue of the project including the interest from the grant and issues an expenditure verification report conforming to the instructions of the MA according to Article 1.13.

The Lead Beneficiary and the Beneficiaries grant the controllers all access rights necessary for the verification.

The expenditure verification report accompanying a request for payment of the final balance covers all expenditures not covered by any previous expenditure verification report.

Based on the expenditure verification reports, conforming to the instructions of the MA according to Article 1.13, the MA determines the total amount of eligible expenditure and the amount of MA contribution, according to the provisions of Article 3.2.

No expenditures will be reimbursed by the MA to the Lead Beneficiary without being verified by the controllers.

**Payment deadlines**

1. The first prefinancing instalment will be paid by the MA to the Lead Beneficiary within 30 days, as from the date of reception by the MA of the signed Contract accompanied by the prefinancing payment request and proof of compliance with the relevant formalities at national level necessary for the implementation of the project, i.e. proof of request for registration of the grant contract by the National Authority for each Ukrainian Beneficiary.
2. Payments of the interim instalment and of the final balance shall be made by the MA within 90 days of receipt of the payment request from the Lead Beneficiary by the JTS, subject to the approval by the MA of the accompanying interim and final reports.
3. The payment obligations of the MA 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.

Notwithstanding the first paragraph, the MA may postpone this end date to be able to fulfil its payment obligations, in all cases where the Lead Beneficiary has not 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 22, or in other exceptional circumstances accepted by the MA. The MA shall notify the Lead Beneficiary of any postponement of the end date.

**Suspension of the period for payments**

1. Without prejudice to Article 17, the MA may suspend the time-limits for payments by notifying the Lead Beneficiary that:

a) the amount indicated in its request of payment is not due, or

b) proper supporting documents have not been supplied, or

c) the MA needs to request clarifications, modifications or additional information to the narrative or financial reports, or

d) the MA needs 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 in the implementation of the project, or

f) it is necessary to verify whether the Lead Beneficiary and/or the Beneficiaries have breached any substantial obligations under this Contract.

f) in case of dispute between the Contract parties as provided in Article 22.

g) the visibility obligations set out in Article 10 were not met

h) in other exceptional circumstances.

The suspension of the time-limit for payment starts when the above notification is sent by the MA to the Lead Beneficiary via the JTS. The Lead Beneficiary shall provide any requested information, clarification or document within the deadline stipulated in the request, but no later than 30 days from the date of the request. The time-limit starts running again on the date on which the requested information, clarification or document is recorded by the MA/JTS.

If, notwithstanding the information, clarification or document provided by the Lead Beneficiary, the payment request is still inadmissible, then the MA may refuse to proceed further with payments or declare the respective expenditure as ineligible.

In addition, the MA may also suspend fully or partially payments as a precautionary measure, with prior notice of the Lead Beneficiary, prior to, or instead of, terminating this Contract as provided for in Article 17.

Moreover, where the award procedure or performance of the Contract is vitiated by substantial errors or irregularities, or by fraud, or by breach of obligations attributable to the Lead Beneficiary and/or the Beneficiaries, the Managing Authority may refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.

**Rules for currency conversion**

1. The MA shall make payments in euro to the Lead Beneficiary to the bank account referred to in the financial identification form in Annex IV, which allows the identification of the funds paid by the MA.

Reports shall be submitted in euro. For the purpose of reporting, conversion into euro shall be made by each Beneficiary using the monthly accounting exchange rate of the European Commission of the month during which the expenditure was submitted for verification in accordance with Article 4.9.

In the event of an exceptional exchange-rate fluctuation, the Parties shall consult each other with a view to amend the project and lessen the impact of such a fluctuation without increasing the grant or putting into question the grant award decision. Where necessary, the MA may take additional measures such as terminating the Contract.

**Article 5 - Obligation to provide information and reports**

1. The Lead Beneficiary and the Beneficiaries shall provide the MA/JTS with all required information on the implementation of the project, in the language of the Contract. To this end, the Lead Beneficiary must draw up interim and final reports, progress reports and provide any other information requested by MA/JTS.
2. If the Lead Beneficiary fails to provide any report or fails to provide any additional information requested by the MA within the set deadline, and without an acceptable and sufficient written explanation of the reasons, the MA may terminate this Contract according to Article 17.2 a).

**Interim and final reports**

1. The interim and final reports shall describe the project’s implementation during the reporting period. When submitting a payment request, the Lead Beneficiary shall ensure that all the Beneficiaries have the same reporting period except the situation when, due to justified reasons, one or more Beneficiaries do not submit individual interim payment request(s).
2. 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 from the Beneficiaries all the necessary information and draw up consolidated interim and final reports. These reports shall be drafted in the currency and language of this Contract and shall:

a) cover the project as a whole, regardless of which part of it is financed by the MA;

b) consist of a narrative and a financial report using the templates provided through MA’s instructions according to Article 1.13;

c) provide a full account of all aspects of the project's implementation for the period covered, including status of the procurement procedures of the contracts awarded under Article 9 and achievement of project outputs and results as measured by the corresponding indicators and with clear reference to relevant sources of verification;

d) describe the difficulties encountered and measures taken to overcome them;

e) inform about any changes intended to be made to the project;

f) include necessary updates on: project management arrangements and risks management, schedule of activities, the information and communication plan, etc;

g) present the status of implementing the measures recommended following the monitoring or verification missions undertaken.

Additionally, the final financial report shall cover any period not covered by the interim report. The final narrative report shall cover the whole implementation period.

1. Reports shall be submitted accompanied by the payment request conforming to the model in Annex IV and a consolidated expenditure verification report as specified in Article 4.9, taking into account the following reporting periods:

**a) in case of interim report:**

* The interim reporting period is intended as the period elapsed until the part of the expenditure actually incurred and paid which is financed by the MA is of at least 70 % of the previous payment. The Lead Beneficiary shall present the interim report within 90 days following the end of this period.
* If half of the implementation period has elapsed and the part of the expenditure actually incurred and paid which is financed by the MA is less than 70% of the previous payment, the Lead Beneficiary shall present an interim report within 90 days following this period. The interim payment shall be reduced by the amount corresponding to the difference between the 70% of the previous payment and the part of the eligible expenditure actually incurred and paid which is financed by the MA. In this case, the following reporting period starts from the next day following the end of the period covered by this payment request.
* In case the Lead Beneficiary does not receive from one or more Beneficiaries the individual payment request(s) accompanied by the corresponding expenditure verification report(s), it may nevertheless submit the interim payment request provided that there is proper justification analysed and approved ex-ante by the MA. In such situation, MA will reduce the interim pre-financing with the corresponding share(s) of grant pertaining to the Beneficiary(ies) who failed to submit the individual payment request(s).

**b) in case of final report:**

* The Lead Beneficiary shall present a final report no later than six months after the implementation period as defined in Article 2. Due to time constraints at Programme level, this period may be reduced through the MA’s instruction as provided for in Article 1.13.

1. The Lead Beneficiary and the Beneficiaries shall ensure that any information provided is complete, correct and reliable, is substantiated by adequate supporting documents that can be checked and that the costs declared have been incurred and paid and can be considered as eligible in accordance to this Contract.
2. Approval of the reports by the MA shall not imply recognition of their regularity nor of the authenticity, completeness and correctness of the declarations and information that they contain.

**Progress reports**

1. The progress report, covering every 4 months (for standard projects)/6 months (for LIPs) of the implementation period of the project, shall be submitted to the JTS no later than 30 days after the above period has elapsed. If there is an overlapping between the months when the progress report and the interim report or the final report are due, only the interim or the final report shall be submitted.
2. The progress reports shall be drawn up *mutatis mutandis* in accordance with Article 5.4 except the provisions related to the financial report.

**Reports on sustainability**

1. In case of a project including an infrastructure component, the Lead Beneficiary shall provide the MA/JTS with all required information related to the sustainability aspects as indicated in the Description of the project and/or as recommended by any monitoring missions.
2. The reports shall be submitted annualy for a period of five years starting from the first year following the payment date of the final balance to the project. The annual deadline for submission of the above-mentioned reports is of maximum 30 days from the day and month of the payment of the final balance to the project.

**Other information to be provided**

1. The MA/JTS may request additional information at any time. The Lead Beneficiary shall provide this information within the deadline stipulated in the request but no later than 30 days from the request. Moreover, the Lead Beneficiary/Beneficiaries shall facilitate meetings, interviews, surveys etc. with or within the project target groups/final beneficiaries/main stakeholders at the request of the MA/JTS.
2. The Lead Beneficiary/Beneficiaries shall support the JTS/MA and EC in performing the results oriented missions including, but not limited to, provision of all the information required within the deadlines requested.
3. The Lead Beneficiary/ Beneficiaries shall inform the JTS on the upcoming major project events within a reasonable period of time but no later than 10 working days prior to carrying out an event.

**Article 6 - Role of the Lead Beneficiary**

1. The Lead Beneficiary shall:

a) assume responsilibity for ensuring implementation of the entire project, respectively monitor and ensure that the entire project is implemented in accordance with this Contract, the Guidelines for Grant Applicants, the Programme and the applicable EU and national legislation, and ensure coordination with all Beneficiaries in its implementation;

b) be the intermediary for all communications between the Beneficiaries and the MA/ JTS. Notwithstanding this provision, the MA/JTS may address directly any of the Beneficiaries if the circumstances so require, with copy to the Lead Beneficiary;

c) be liable towards the MA for ensuring that all the Beneficiaries and contractors fulfil their obligations under and in accordance with this Contract. It is also liable towards the MA for any infringements of obligations under this Contract by the Beneficiaries and contractors in the same way as for its own conduct;

d) be responsible together with all the Beneficiaries for supplying and uploading in the electronic system of the Programme all the documents and information related to project’s implementation according to MA/JTS instructions, in particular reports, modification requests 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 MA/ JTS.

Any information provided, as well as any request made by the Lead Beneficiary to the MA, shall be deemed to have the agreement of all the Beneficiaries;

e) inform the MA/ JTS of any event likely to affect or delay the implementation of the project;

f) inform the MA/ JTS of any change in the legal, financial, technical, organisational or ownership situation of the Lead Beneficiary or of any of the Beneficiaries affecting project’s implementation, as well as of any change in the name, address or legal representative of the Lead Beneficiary or of any of the Beneficiaries;

g) be responsible in the event of audits, checks, monitoring or evaluations, as described in Article 11 for ensuring the provision of all the necessary documents, including the project accounts of the Beneficiaries, copies of the supporting documents and signed copies of any contract concluded according to Article 9;

h) ensure that the expenditure presented by the Beneficiaries has been incurred for the purpose of implementing the project and corresponds to the activities set in the grant contract;

i) verify that the expenditure presented by the beneficiaries has been examined pursuant Article 4.9;

j) submit to the MA/ JTS the payment requests in accordance with the Contract;

k) be the sole recipient, on behalf of all of the Beneficiaries, of the payments from the MA. The Lead Beneficiary shall ensure that the appropriate payments are then made to the Beneficiaries without delay and in full accordance with the arrangements laid down in the Partnership Agreement (Annex III). No amount shall be deducted or withheld and no specific charge with equivalent effect shall be levied that would reduce those amounts for the Beneficiaries. Notwithstanding the provisions of this paragraph, the provisions of Article 4.4 shall apply;

l) not delegate any, or part of, these tasks to the Beneficiaries or other entities;

m) commit itself to take all necessary measures to ensure that all Beneficiaries ensure their own contribution and the non-eligible expenditures, as well as the temporary availability of funds for the proper implementation of the project until they are reimbursed by the MA;

**Article 7 – Liability**

1. The MA 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 of the Beneficiaries while the project is being carried out or as a consequence of the project. The MA cannot accept any claim for compensation or increases in payment in connection with such damage or injury.
2. The Lead Beneficiary and the Beneficiaries 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 and the Beneficiaries shall discharge the MA of all liability arising from any claim or action brought as a result of an infringement of this Contract, of the rules or regulations by the Lead Beneficiary and by the Beneficiaries, or the Lead Beneficiary’s and the Beneficiaries’ 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 this Article 7, employees of the Lead Beneficiary and of the Beneficiaries shall be considered third parties.

**Article 8 - Eligible Costs**

**Cost eligibility requirements**

1. Eligible costs are actual costs incurred and paid by the Lead Beneficiary and/or the Beneficiaries, irrespective they are EU contribution or own co-financing, which meet all the following criteria:

a) they are incurred during the implementation period of the project as specified in Article 2. In particular:

* + Costs relating to services and works shall relate to project activities performed during the implementation period. Costs relating to supplies shall relate to delivery and installation of items and acceptance during the implementation period. Signature of a contract, placing an order or entering into any commitment for expenditure within the implementation period for future delivery of services, works or supplies after expiry of the implementation period do not meet this requirement. Cash transfers between the Lead Beneficiary and/or the Beneficiaries may not be considered as costs incurred;
  + Costs incurred should be paid before the submission of the final reports.
  + An exception is made for costs relating to final reports, only for expenditure verification, which may be incurred after the implementation period of the project. They may be paid afterwards, provided they are listed in the final report together with the estimated date of payment;
  + If it is not foreseen otherwise in the the national legislation of the Lead Beneficiary and/or of the Beneficiaries, procedures to award contracts, as referred to in Article 9, may have been initiated and contracts may be concluded by the Lead Beneficiary and/or the Beneficiaries before the start of the implementation period of the project, provided the provisions of Article 9 have been respected;

b) they are included in the estimated overall budget for the project;

c) they are necessary for the implementation of the project;

d) they are identifiable and verifiable, in particular being recorded in the accounting records of the Lead Beneficiary and/or the Beneficiaries and determined according to the accounting standards and the usual cost accounting practices applicable to the Lead Beneficiary and/or the Beneficiaries;

e) they comply with the requirements of applicable tax and social legislation;

f) they are reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency;

g) they are supported by invoices or documents of equivalent probative value, as well as any other relevant documents;

h) there is compliance with visibility obligations set out in Article 10.

i) Notwithstanding letter (a), costs related to studies and documentation for projects including an infrastructure component respectively, the expenditure for the Feasibility Study, Environment Impact Assessment, technical documentation, are eligible although they were incurred during the project preparation period which starts after the approval date of the Programme, respectively 17 December 2015. (*provision available only* *for LIPs and hard projects and soft projects with an infrastructure component).*

j) Notwithstanding letter (a), in order to ensure the existence of strong partnerships, preparatory costs incurred by the project to which a grant is awarded are eligible provided that, in addition to the other requirements, the following conditions are met *(provision available only for hard projects, soft project with an infrastructure component and soft projects)*:

* + they are incurred after the publication of the call for proposals;
  + they are limited to travel and subsistence costs for staff employed by the Lead Beneficiary and Beneficiaries, provided they meet the conditions of point (b) of Article 8.1;
  + they do not exceed the maximum amount fixed in Article 3.52

k) Notwithstanding letter (a), costs incurred after the date of submission of the project proposal are eligible provided that the Lead Beneficiary has demonstrated in Description of the project the need to start the project implementation before the contract signature. *(provision available only for LIPs)*

**Eligible direct costs**

1. Subject to Article 8.1 and, where relevant, to the provisions of Article 9 being respected, the following direct costs of the Lead Beneficiary and/or the Beneficiaries shall be eligible:

a) the cost of staff assigned to the project, under the following cumulative conditions:

* + they relate to the costs of activities which the Lead Beneficiary and the Beneficiaries would not carry out if the project was not undertaken;
  + they must not exceed those normally borne by the Lead Beneficiary and the Beneficiaries unless it is demonstrated that this is essential to carrying out the project;
  + they relate to actual gross salaries including social security charges and other remuneration-related costs;

b) travel and subsistence costs for the project staff and other persons taking part in the project taking part in the project, provided they exceed neither the costs normally paid by the Lead Beneficiary and/or the Beneficiaries according to their national rules and regulations nor the rates published by the Commission at the time of the mission;

c) specificaly for the purposes of the project, purchase (new) or rental costs for vehicles, office equipment and endowment, specialized equipment and endowment, and supplies for the specialized equipment, provided they correspond to market prices.

f) costs entailed by contracts awarded by the Lead Beneficiary and/or the Beneficiaries for the purposes of the project, provided the provisions of Article 9 are respected;

g) costs deriving directly from the requirements of the Contract (such as information and visibility activities, expenditure verification, translation, interpreters etc.).

**Indirect costs**

1. 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 8.1. However, they are incurred by the Lead Beneficiary and/or the Beneficiaries in connection with the project. They may not include ineligible costs as referred to in Article 8.7 or costs already declared under another costs item or line of the budget of this Contract.

A fixed percentage of the total amount of direct eligible costs of the project, excluding costs incurred in relation to the provision of infrastructure and not exceeding the percentage laid down in Article 3.3, may be claimed to cover indirect costs for the project provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method. The amount of indirect costs established before the signature of the Contract may not exceed the maximum ceiling in Article 3.3 either in terms of the absolute value or the percentage stated at project level.

Flat-rate funding in respect of indirect costs does not need to be supported by justifying documents.

**Expenditures outside the Programme area**

8.4 The budget of Beneficiaries located outside the core regions of the Programme, other than the Lead Beneficiary, and costs for activities implemented outside the core regions of the Programme by any Beneficiary, including the Lead Beneficiary, shall not exceed 10% of the total project budget.

**Contigency reserve**

8.5¹ A contingency reserve not exceeding 10% of the costs related to the provision of infrastructure may be included in the budget of the project, to allow for adjustments necessary in case of unforeseen circumstances. It can be used only with the prior written authorisation of the MA, upon duly justified request by the Lead Beneficiary. *(provision available only for LIPs, hard projects and soft projects with an infrastructure component)*

8.5² No contingencies are allowed. *(provision available only for soft projects)*

**In kind contributions**

1. Any contributions in kind do not represent actual expenditure and are not eligible costs. Notwithstanding the above, if the Description of the project foresees contributions in kind, such contributions have to be provided as such.

**Non-eligible costs**

1. The following costs shall not be considered eligible:

a) debts and debt service charges (interest);

b) provisions for losses or liabilities;

c) costs declared by the Lead Beneficiary and/or the Beneficiaries and financed by another project or programme, or from any other sources;

d) purchase of land or buildings;

e) exchange-rate losses;

f) duties, taxes and charges, including VAT, except where non-recoverable under national legislation;

g) loans to third parties and leasings;

h) fines, financial penalties and expenses of litigation;

i) contributions in kind as defined in Article 14(1) of the Regulation no 897/2014;

j) costs exceeding the threshold of 10% of the project budget to be used by Beneficiaries, other than the Lead Beneficiary, located outside the core regions of the Programme, and for activities implemented outside the core regions of the programme by any Beneficiary, including the Lead Beneficiary;

k) used purchased equipment or vehicles

l) state aid relevant activities.

**Article 9 – Procurement rules**

1. If the Lead Beneficiary and the Beneficiaries have to conclude procurement contracts with contractors in order to carry out certain project activities, they shall respect the procurement rules set out in Commission Implementing Regulation no 897/2014.
2. Contracting authorities or contracting entities within the meaning of the Union legislation applicable to procurement procedures in the Member States, shall apply national laws, regulations and administrative provisions adopted in connection with Union legislation, as laid down in Article 52.1 of the Commission Implementing Regulation no 897/2014.
3. In all other cases, the public or private beneficiaries shall apply the provisions set out in Articles 52.2 to 56 of the Commission Implementing Regulation no 897/2014, supplemented by:

a) the Lead Beneficiaries / Beneficiaries established in Ukraine, shall apply national procurement laws. Notwistanding the previous paragraph and if national legislation imposes otherwise, for contracts below 60,000 EUR the provisions of the Procurement and grants for European Union external actions (PRAG), including templates and details related to each type of procedures (mainly PRAG chapters 2, 3, 4, 5 and 8), in force at the moment of the launch of the call for proposals, available at http://ec.europa.eu/europeaid/prag/, and <http://ec.europa.eu/europeaid/prag/annexes.do>, respectively.

The entities which are not able, according to the Ukrainian legislation to apply national procurement laws, shall apply the provisions of the *Procurement and grants for European Union external actions* (PRAG), including templates and details related to each type of procedures (mainly PRAG chapters 2, 3, 4, 5 and 8), in force at the moment of the launch of the call for proposals, available at <http://ec.europa.eu/europeaid/prag/>, and <http://ec.europa.eu/europeaid/prag/annexes.do> respectively.

b) the Lead Beneficiaries / Beneficiaries which are not contracting authorities or contracting entities within the meaning of the Union legislation applicable to procurement procedures, established in Romania, shall aply the provisions of the *Procurement and grants for European Union external actions* (PRAG), including templates and details related to each type of procedures (mainly PRAG chapters 2, 3, 4, 5 and 8), in force at the moment of the launch of the call for proposals, available at [http://ec.europa.eu/europeaid/prag/,](http://ec.europa.eu/europeaid/prag/,and) and <http://ec.europa.eu/europeaid/prag/annexes.do>, respectively.

In all cases, the provisions regarding publication, forseen by Articles 53 to 55 of the Commission Implementing Regulation no 897/2014, shall prevail. In this respect, the Lead Beneficiary/Beneficiaries mentioned at paragraph 9.3 must submit the procurement notice for publication to the Joint Technical Secretariat in electronic form at least 15 days before the intended date of publication and must arrange simultaneous publication of identical procurement notices in any other appropriate media directly.

1. In all cases, the rules on nationality and origin set out in Articles 8 and 9 of Regulation (EU) no.236/2014 including all subsequent modifications and additions shall apply.
2. The Lead Beneficiaries and the Beneficiaries shall ensure that the conditions applicable to them under Articles 7, 10, 11, 13, 14, 20 and 21 of this Contract are also applicable to contractors awarded a procurement contract.

**Article 10 – Visibility and transparency**

1. The Lead Beneficiary and the Beneficiaries must take all necessary steps to publicise the fact that the European Union has financed or co-financed the project through the European Neighbourhood Instrument. Such measures must comply with the Communication and Visibility Manual for the Joint Operational Programme Romania – Ukraine 2014-2020.
2. In particular, the Lead Beneficiary and the Beneficiaries shall mention the project and the ENI - EU's financial contribution in information or materials given to the target groups, final beneficiaries, stakeholders, the general public, in their internal and annual reports, and in any dealings with the media. They shall display the EU flag and the Programme logo wherever appropriate.
3. Any written material or publication of the Lead Beneficiary and the Beneficiaries concerning the project, including those used/ distributed during project meetings and events must specify that the project has received ENI/EU funding. Any publication by the Lead Beneficiary and the Beneficiaries, in whatever form and by whatever medium, including the internet, must include the following statement: “This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of < Lead Beneficiary’s/Beneficiaries’ name > and can under no circumstances be regarded as reflecting the position of the European Union or the Programme Romania - Ukraine.”
4. The Lead Beneficiary and the Beneficiaries shall publish the information on the project and the produced outputs and results, where available, on their’s and/or project’s website.
5. The Lead Beneficiary and the Beneficiaries shall make public upon request and authorise the MA and the European Commission to make public and/or publish at least, but not limited at, their name and address, nationality, project name, project summary, the grant received, duration, geographical coverage, the total eligible expenditure and the maximum amount of the grant and rate of funding of the project's costs, as laid down in the Article 3.2.

**Article 11 - Accounts and technical and financial checks**

1. The MA/JTS reserve the right to check, at any time, the conformity of the Programme funds' commitment and disbursement with the rules. In particular, MA and/or JTS verifies that services, supplies or works have been performed, delivered and/or installed and whether expenditure declared by the Lead Beneficiary and the Beneficiaries has been paid according to the applicable law, Programme rules and Contract provisions. Verifications shall include administrative verifications for each payment requested by the Lead Beneficiary and on-the-spot project verifications.

**Accounts**

1. The Lead Beneficiary and the Beneficiaries 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 Lead Beneficiary and the Beneficiaries’ regular system;

b) shall comply with the accounting and book-keeping policies and rules that apply in the country concerned;

c) shall enable revenue and expenditure relating to the project to be easily traced, identified and verified.

1. The Lead Beneficiary/ Beneficiaries shall ensure that any financial report as required under Article 5 can be properly and easily reconciled to the accounting and book-keeping system and to the underlying accounting and other relevant records. For this purpose the Lead Beneficiary and the Beneficiaries shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification.

**Right of access**

1. The Lead Beneficiary and the Beneficiaries shall allow verifications to be carried out by the Audit Authority, the European Commission, the European Anti-Fraud Office, the European Court of Auditors, the relevant authorities in the countries participating in the Programme, the MA/ JTS as well as any bodies / entities authorised by the MA or the above mentioned institutions and bodies that may exercise their power of control concerning premises, documents and information irrespective of the medium in which they are stored. The Lead Beneficiary and the Beneficiaries have to take all steps to facilitate their work.

The verifications described above shall also apply to the activities of contractors, subcontractors and any recipient of financial support who have received Union financing. To this end, the Lead Beneficiary and the Beneficiaries shall ensure, through contractual provisions and any other means at their disposal, that these persons are legally bound by the same obligations as the Lead Beneficiary and the Beneficiaries toward the Audit Authority, the European Commission, the European Anti-Fraud Office, the European Court of Auditors, the national authorities in the countries participating in the Programme, the MA/ JTS and any bodies / entities authorised by the MA or the above mentioned institutions and bodies, and that its own documentation can remedy any shortcoming to the effective enforcement of the said obligations.

1. The Lead Beneficiary and the Beneficiaries shall allow the entities mentioned in Article 11.4 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. Additionally, the European Anti-Fraud Office 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. Where appropriate, the findings may lead to recovery by the MA.

1. Access given to agents of the Audit Authority, the European Commission, European Anti-Fraud Office and the European Court of Auditors, the national authorities in the countries participating in the Programme, the MA/ JTS and to any bodies / entities authorised by the MA carrying out verifications as provided for by this Article as well as by Article 4.13 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.

**Record keeping**

1. The Lead Beneficiary and the Beneficiaries shall keep all records, accounting and supporting documents related to this Contract for five years following the payment of the balance of the Programme, and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim has been disposed of.

They shall be easily accessible and filed so as to facilitate their examination and the Lead Beneficiary and the Beneficiaries shall inform the MA/ JTS of their precise location upon request.

1. All the supporting documents of the activities and the expenses and revenues shall be available in the original form and in electronic form if so requested.
2. In addition to the reports mentioned in Article 5, the documents referred to in this Article include, *inter alia*:

a) Accounting records (computerised or manual) from the Lead Beneficiary and the Beneficiaries’ accounting system such as general ledger, sub-ledgers and analytical accounting sheet, cash flow statement 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, transport tickets, proof of attending seminars, conferences and training courses (including relevant documentation and material obtained, certificates) etc, documents proving the organization of meetings, invitations, agenda, minutes, list of participants;

e) Proof of receipt of goods such as delivery slips from suppliers;

f) Technical documentation related to infrastructures, as well as proof of completion of works, such as acceptance certificates, tangible results of services, studies, publications;

g) Proof of purchase such as invoices and receipts, proof of delivery of services or good;

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, time sheets and any other documents related to the remuneration paid.

**Article 12 - Final amount of the grant**

**Final amount**

1. The grant may not exceed the maximum ceiling in Article 3.2 either in terms of the absolute value or the percentage stated therein.

If the eligible costs at the end of the project are less than the estimated eligible costs as referred to in Article 3.1, the grant shall be limited to the amount obtained by applying the percentage laid down in Article 3.2 to the eligible costs of the project approved by the MA.

1. The revenue generated by the project shall be declared in the final report and shall be deducted from the final payment.

**No profit**

1. The grant may not produce a profit for the Lead Beneficiary and the Beneficiaries during the implementation period. Profit is defined as a surplus of the receipts over the eligible costs approved by the MA when the request for payment of the final balance is made.
2. The receipts to be taken into account are the consolidated receipts on the date on which the payment request for the final balance is made by the Lead Beneficiary that fall within one of the two following categories:

a) revenue generated by the project;

b) financial contributions specifically assigned by the donors to the financing of the same eligible costs financed by this Contract. Any financial contribution that may be used by the Lead Beneficiary and/or the Beneficiaries to cover costs other than those eligible under this Contract or that are not due to the donor where unused at the end of the project are not to be considered as a receipt to be taken into account for the purpose of verifying whether the grant produces a profit for the Lead Beneficiary and/or the Beneficiaries;

c) interest produced by the prefinancing and interim payments received from the MA.

**Interest**

12.5 Any interest or equivalent benefits accruing from prefinancing and interim instalments paid by the MA to the Lead Beneficiary shall be mentioned in the interim and final reports. It may be deducted from the payment of the final balance of the amounts due to the Lead Beneficiary.

**Article 13 – Sustainability, ownership/ use of project results and assets**

1. The sustainability arrangements declared and assumed in the project are binding for the Lead Beneficiary and the Beneficiaries and may be monitored and verified accordingly by the MA/ JTS during project implementation or after the payment of the final balance, including by requesting relevant reports and/or other documents or information.
2. In case the project includes an infrastructure component, if, within five years of the project closure, the project is subject to a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives, the Lead Beneficiary shall repay to the MA the ENI grant. Sums unduly paid in respect of the project shall be recovered by the MA in proportion to the period for which the requirement has not been fulfilled.
3. 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 the Beneficiaries. The Lead Beneficiary and the Beneficiaries are responsible for the purposeful use of equipment after its receipt.
4. Without prejudice to Article 13.3, the Lead Beneficiary and the Beneficiaries shall grant the MA/ JTS, the National Authorities of the countries participating in the Programme and the European Commission the right to use freely and as they see 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.
5. The Lead Beneficiary and the Beneficiaries shall ensure that they have all rights to use any pre-existing intellectual property rights necessary to implement this Contract.

**Article 14 – Evaluation/monitoring of the project**

1. If the MA/JTS or the European Commission carries out an interim or ex post evaluation or a monitoring mission, the Lead Beneficiary and the Beneficiaries shall undertake to provide it and/or the persons authorised by it with any document or information which will assist with the evaluation or monitoring mission, and grant them the access rights described in Article 11.

**Article 15 - Amendment of the Contract**

1. Any amendment to the Contract, including the annexes thereto, must be set out in writing in an addendum. This Contract can be modified during its execution period.
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. The maximum grant referred to in Article 3.2 may not be increased.
3. If an amendment is considered necessary, the Lead Beneficiary shall submit a duly justified request to the MA with 45 days before the date on which the amendment should enter into force, unless there are special circumstances duly substantiated and accepted by the MA.
4. Notwithstanding the provisions of Article 15.1, changes of address, bank account, controller, correction of material errors or inconsistencies between different parts of the project, minor changes to the Partnership Agreement may simply be notified by the Lead Beneficiary. However, in duly substantiated circumstances, the MA may oppose the Lead Beneficiary’s or the Beneficiaries’ choice.

In case the Lead Beneficiary fails to inform about any changes or the modifications notified are not in line with contract provisions all consequences, including those of financial nature, shall be borne by the Lead Beneficiary.

1. The MA reserves the right to require that the auditor referred to in Article 32.1 of the Regulation no 897/2014 be replaced if considerations which were unknown cast doubt on the auditor's independence or professional standards, inter alia due to the non-reliability of the submitted reports, if so detected by the Control Contact Point in Ukraine, MA or the Audit Authority.

**Article 16 - Extension and Suspension**

**Extension**

1. The Lead Beneficiary shall inform the MA without delay of any circumstances likely to hamper or delay the implementation of the project. The Lead Beneficiary may request an extension of the project's implementation period as laid down in Article 2 in accordance to Article 15 no later than 45 days before it ends, unless circumstances duly justified and accepted by the MA occur. The request shall be accompanied by all the supporting evidence needed for its appraisal. A final decision on such requests is subject of approval by the Joint Monitoring Committee. The Lead Beneficiary and Beneficiaries understand and agree that an extension of the project implementation will not imply an increase of the costs for the staff assigned for the Action, unless circumstances duly justified and accepted by the MA occur.

**Suspension by the Lead Beneficiary**

1. 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 or, although timely measures have been taken, delays may occur in fulfilling the contractual obligations. The Lead Beneficiary shall inform the MA without delay, stating the nature, probable duration and foreseeable effects of the suspension.
2. The Lead Beneficiary or the MA may terminate this Contract in accordance with Article 17.1. If the Contract is not terminated, the Lead Beneficiary and/or the Beneficiaries shall endeavour to minimise the time of its suspension and any possible damage and shall resume implementation once circumstances allow, informing the MA accordingly. No activities are to be made and no expenditures are to be incurred and paid within the suspension period, unless otherwise instructed by the MA.

**Suspension by the Managing Authority**

1. The MA 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 or, although timely measures have been taken, delays may occur in fulfilling the contractual obligations. To this purpose, the MA shall inform the Lead Beneficiary stating the nature and probable duration of the suspension.
2. The MA or the Lead Beneficiary may terminate this Contract in accordance with Article 17.1. If the Contract is not terminated, the Lead Beneficiary and/or the Beneficiaries 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 MA. No activities are to be made and no expenditures are to be incurred and paid within the suspension period, unless otherwise instructed by the MA.
3. The MA may also suspend this Contract or any part thereof if the MA has evidence that, or if, for objective and well justified reasons, the MA deems necessary to verify whether presumably:

a) the grant award procedure or the implementation of the project have been subject to substantial errors, irregularities or fraud;

b) the Lead Beneficiary and/or the Beneficiaries have breached any substantial obligation under this Contract.

1. The Lead Beneficiary shall provide any requested information, clarification or document within 30 days of receipt of the requests sent by the MA. If, notwithstanding the information, clarification or document provided by the Lead Beneficiary, 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 MA may terminate this Contract according to Article 17.2 a) and g).

**Force majeure**

1. 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 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.

**Extension of the implementation period following a suspension**

1. In case of suspension according to Articles 16.2, 16.4 and 16.6, 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.

**Article 17 – Termination of the Contract**

**Termination in case of exceptional circumstances**

1. In the cases foreseen in Article 16.2 and 16.4, if the Lead Beneficiary or the MA 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 MA may terminate this Contract by serving two months’ written notice, without being required to pay indemnity.

**Termination by the Managing Authority**

1. Without prejudice to Article 17.1, in the following circumstances the MA may, after having consulted the Lead Beneficiary, terminate this Contract without any indemnity on its part when:
2. the Lead Beneficiary and/or the Beneficiaries fail, without justification, to fulfil any substantial obligation incumbent on them individually or collectively by this Contract thus leading to substantial errors including the infringement opf State Aid rules and, after being given notice by letter to comply with those obligations, still fails to do so or to provide a satisfactory explanation within 30 days of receipt of the letter;
3. the Lead Beneficiary or the Beneficiaries have impeded or prevented the auditing, control or monitoring mission or the recommendations resulted from these missions are not observed or the corresponding deadlines are unjustifiably delayed;
4. where the Lead Beneficiary and/or the Beneficiaries change legal personality, unless an addendum recording that fact is drawn up;

d) the Lead Beneficiary and/or the Beneficiaries are bankrupt, subject to insolvency or winding-up procedures, where their assets are being administered by a liquidator or by a court, where they are in an arrangement with creditors, where their activities are suspended, or where they are in any analogous situation arising from a similar procedure provided for under EU/national laws or regulations;

e) it has been established by a final judgment or a final administrative decision that the Lead Beneficiary and/or the Beneficiaries are in breach of their obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established or those of the country of the performance of the contract;

f) it has been established by a final judgment or a final administrative decision that the Lead Beneficiary and/or the Beneficiaries are guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the Lead Beneficiary and/or the Beneficiaries belong, or by having engaged in any wrongful conduct which has an impact on their professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:

|  |  |
| --- | --- |
| (i) | fraudulently or negligently misrepresenting or failing to supply the information required for the verification of the absence of grounds for exclusion or as a condition for participating in the call for proposals or in the performance of a contract; |
| (ii) | violating intellectual property rights; |
| (iii) | attempting to influence the decision-making process during the evaluation process; |

g) it has been established by a final judgment that the Lead Beneficiary and/or the Beneficiaries are guilty of any of the following:

|  |  |
| --- | --- |
| (i) | fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995[[2]](#footnote-2); |
| (ii) | corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997[[3]](#footnote-3), in Article 2(1) of Council Framework Decision 2003/568/JHA[[4]](#footnote-4) and in Article 14.3 of Annex I General Conditions of ENI CBC 2014-2020 Financing Agreement, or corruption as defined in the law of the country where the MA is located, or the country in which the economic operator is established or the country of the performance of the contract; |
| (iii) | participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA[[5]](#footnote-5); |
| (iv) | money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council[[6]](#footnote-6); |
| (v) | terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA[[7]](#footnote-7), respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision; |
| (vi) | child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council[[8]](#footnote-8); |

h) the Lead Beneficiary and/or the Beneficiaries have shown significant deficiencies in complying with main obligations in the performance of a contract financed by the European Union budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an authorising officer, OLAF or the European Court of Auditors;

i) it has been established by a final judgment or final administrative decision that the Lead Beneficiary and/or the Beneficiaries have committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95[[9]](#footnote-9)

j) the Lead Beneficiary and/or the Beneficiaries have misrepresented the information required as a condition for participating in the call for proposals;

k) the European Commission decides to discontinue the Programme.

1. The MA shall exclude the Lead Beneficiary and/or the Beneficiaries where a person who is a member of the administrative, management or supervisory body of that Lead Beneficiary and/or Beneficiaries, or who has powers of representation, decision or control is in one or more of the situations referred to in points f) to j) of Article 17.2. The MA shall also exclude the Lead Beneficiary and/or the Beneficiaries where a natural or legal person that assumes unlimited liability for the debts of the Lead Beneficiary and/or Beneficiaries is in one or more of the situations referred to in point c) or d) of Article 17.2.
2. This Contract may be terminated if it has not given rise to any payment by the MA within two years of its signature on top of the initial pre-financing, pending the JMC Decision in this respect.

**Effects of termination**

1. Upon termination of this Contract, the MA is entilted to request the Lead Beneficiary to reimburse the entire amount of the grant paid by the MA. 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.

**Article 18 – Administrative sanctions and financial corrections**

1. Without prejudice to the application of other remedies laid down in the Contract, the Lead Beneficiary and/or the Beneficiaries who have made false declarations and fraud or were in serious breach of the contractual obligations may be excluded from all contracts and grants financed by the MA.
2. In addition or in alternative to the administrative sanctions laid down in Article 18.1, the Lead Beneficiary and/or the Beneficiaries may also be subject to financial corrections.
3. The MA may apply financial corrections if the Lead Beneficiary and/or Beneficiaries do not/ only partially achieve the project indicators depending on the category of non-achieved indicators (eg. indicators contributing to the ones included in the Programme/indicators affecting the achievement of the projects’ objectives). The financial corrections shall be applied according to a specific procedure approved by the JMC that shall be communicated to the Lead Beneficiary upon the signature of the contract;
4. The MA shall makealso financial corrections required in connection with individual or systemic irregularities detected in the project. The financial corrections shall consist of cancelling all or part of the Union contribution to the project. The MA shall take into account the nature and gravity of the irregularities and the financial loss and shall apply a proportionate financial correction.
5. The criteria for establishing the level of financial correction to be applied mentioned in Article 18.4 and the criteria for applying flat rates or extrapolated financial correction are those adopted in accordance with Regulation (EU) No 1303/2013[[10]](#footnote-10), in particular Article 144, as well as those contained in the Commission Decision of 19 December 2013[[11]](#footnote-11).
6. The MA shall formally notify the Lead Beneficiary and/or the Beneficiaries concerned of any decision to apply such corrections.
7. In case the European Commission applies individual financial corrections to the Programme according to Article 72 of Regulation no 897/2014, the MA may decide to cancel part of the grant in order to cover these corrections from the projects’ budgets, concerned by the corrections.
8. In case the European Commission applies financial corrections to the Programme according to Article 72 of Regulation no 897/2014 and the financial corrections relate to systemic deficiencies in the programme management and control system, the MA may decide cancel part of the grant in order to cover these corrections from the project’ budget, as follows:
9. if the systemic deficiency concerns one specific country, the Lead Beneficiary and/or the Beneficiaries established in the respective country shall be responsible for reimbursing to the Programme accounts the amount identified as a result of the financial correction;
10. if the systemic deficiency concerns the whole system, the Lead Beneficiary and each Beneficiary shall be responsible for reimbursing to the Programme accounts the amount representing the percentage of the financial correction applied to the expenditure incurred by the Lead Beneficiary and the Beneficiaries and declared by the MA to the European Commission at the date of the decision to apply the financial correction.
11. In case of a decision to cancel a part of the grant, the Lead Beneficiary shall submit to the MA a revised budget, within 14 days following the receipt of MA’s notification. In case of failure to respect the deadline, the cancellation shall be applied proportionally to all budgetary lines. The modification of the contract in case of cancellation at project level shall take the form of a decision of the representative of the Managing Authority signing the contract, which will be notified to the Lead Beneficiary, and which becomes part of the Contract.
12. Subject to Article 61 and 62 of Regulation no 897/2014, the MA has the right to temporarily withhold payments to a particular beneficiary (Lead Beneficiary or Beneficiary) 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.

**Article 19 - Recovery**

1. If recovery is justified under the terms of this Contract, including where the award procedure or performance of the Contract is vitiated by substantial errors including infringement of State Aid rules or irregularities or by fraud attributable to the Lead Beneficiary and/or the Beneficiaries or if any amount is unduly paid to the Lead Beneficiary and/or to the Beneficiaries, the Lead Beneficiary undertakes to repay the MA these amounts, within 45 days of the issuing of the debit note, the latter being the letter by which the MA requests the amount owed by the Lead Beneficiary and/or by the Beneficiaries, including bank charges incurred by the MA for the payment to the Lead Beneficiary of the amounts which become due to the MA.
2. Payments made do not preclude the possibility for the MA to issue a debit note following an audit or further verification of the payment request, an on the spot check, or any other type of verifications including those reffered to in Articles 13.1 and 13.2.
3. If a verification reveals that the methods used by the Lead Beneficiary and/or the Beneficiaries to determine unit costs, lump sums or flat-rates are not compliant with the conditions established in this Contract and, therefore an undue payment has been made, the MA shall be entitled to recover from the Lead Beneficiary corresponding to the non-compliant amount of the unit costs, lump sums or flat rate financing.
4. The Lead Beneficiary undertakes to repay any amounts paid in excess of the final amount due to the MA within 45 days of the issuing of the debit note, the latter being the letter by which the MA requests the amount owed by the Lead Beneficiary, including bank charges incurred by the MA for the payment to the Lead Beneficiary of the amounts which become due to the MA.
5. If the MA demands repayment of grant funds in accordance with this Contract, the Lead Beneficiary shall be liable to the MA for the total amount of the grant under this Contract, including the share of the grant entitled to the Beneficiaries.Without prejudice to the prerogative of the MA, if necessary, the Member State or the CBC partner country where the Lead Beneficiary and/or the concerned Beneficiary is established may proceed itself to the recovery by any means from the respective Lead Beneficiary and/or Beneficiary.
6. Without prejudice to the prerogative of the MA, if necessary, the European Union may, as donor, proceed itself to the recovery by any means from the respective Lead Beneficiary and/or Beneficiary.

**Interest on late payments**

1. Should the Lead Beneficiary fail to make repayment within the deadline set by the MA, the MA may increase the amounts due by adding interest of three and a half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the MA, and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.

**Offsetting**

1. Amounts to be repaid to the MA may be offset against amounts of any kind due to the Lead Beneficiary or to the other Beneficiaries, after informing it/ them accordingly.

**Other provisions**

1. The repayment under Article 19.4 or the offsetting under Article 19.8 amount to the payment of the balance.
2. Bank charges incurred by the repayment of amounts due to the MA shall be borne entirely by the Lead Beneficiary.
3. For irregularities discovered after payment of the final balance, the Beneficiaries may repay the due amounts directly to the MA, notifying the Lead Beneficiary about this option.

**Article 20 - Conflict of interests and good conduct**

1. For the purpose of this Contract, the conflict of interest shall mean any situation where there is a divergence between the fulfilment of responsibilities under this grant Contract by the Parties and the private interest of the persons involved in the Contract, which may adversely affect the impartial and objective exercise of the functions of any person involved in the implementation/verification/control/audit of this Contract, for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another person.
2. The Lead Beneficiary and the Beneficiaries shall prevent or end any situation that could compromise the impartial and objective performance of this Contract. Any conflict of interests which may arise during performance of this Contract must be notified in writing to the MA without delay. The Lead Beneficiary and the Beneficiaries shall take appropriate actions to remedy any negative effects of the conflict of interest within 30 days from the notification of the MA.
3. The MA reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken if necessary.
4. The Lead Beneficiary and the Beneficiaries shall ensure that their staff, including their management, are not placed in a situation which could give rise to conflict of interests. Without prejudice to their obligation under this Contract, the Lead Beneficiary and the Beneficiaries shall replace, immediately and without compensation from the MA, any member of their staff in such a situation.
5. The Lead Beneficiary and the Beneficiaries shall respect human rights and applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards.

**Article 21 – Confidentiality**

1. Subject to Article 11, the MA and the Lead Beneficiary and the Beneficiaries 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 the end of the validity period of this Contract as defined by Article 2.5 above.
2. As an exception from the rule provided in the previous paragraph, the data used for visibility purposes, for informing and promoting the use of ENI funds, shall not be considered as having confidential status.
3. The Parties shall bear no responsibility for releasing information on the Contract if:

a) the information was released with the written agreement of the other Party; or

b) the Party was legally forced to release the information.

1. The Lead Beneficiary and the Beneficiaries shall not use confidential information for any aim other than fulfilling their obligations under this Contract unless otherwise agreed with the MA.

**Article 22 - Applicable Law and Dispute Settlement**

1. This Contract shall be governed by the law of the country of the MA.
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 MA 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 MA may notify the other part that it considers the procedure to have failed.
3. In the event of failure of the above procedures, each party to this Contract may submit the dispute to the courts of Bucharest.

**Article 23 - Contact addresses**

23.1 Any communication relating to this contract must be in English language, in writing, state the number and title of the project and be sent to the following addresses:

For the MA:

Ministry of Regional Development, Public Administration and European Funds  
General Directorate for European Territorial Cooperation

Directorate MA for European Territorial Cooperation

Bulevardul Libertatii nr. 14  
040129 Bucuresti, sector 5

Romania

For the Joint Technical Secretariat

Regional Office for Cross Border Cooperation Suceava

<Address of the JTS for correspondence>

For the Lead Beneficiary

<Address of the Lead Beneficiary for correspondence including email adress>

**Article 24 - Annexes**

1. The following documents are annexed to this Contract and form an integral part of the Contract:

Annex I: Description of the project

Annex II: Budget for the project

Annex III: Partnership Agreement between the Lead Beneficiary and the Beneficiaries

Annex IV: Standard request for payment and financial identification form

In the event of conflict between the provisions of the Annexes and those of the present document (Grant contract), those of the Grant contract shall take precedence.

Done in English, in four originals: one for the Lead Beneficiary and three for the Managing Authority.

|  |  |  |  |
| --- | --- | --- | --- |
| **For the Lead Beneficiary** | | **For the MA** | |
| Name |  | Name |  |
| Title |  | Title |  |
| Signature |  | Signature |  |
| Date |  | Date |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**ANNEX IV**

**Request for payment for grant Contract**

***Joint Operational Programme Romania-Ukraine 2014-2020***

<*Date of the request for payment*>

For the attention of

<*address of the Managing Authority*>

Reference number of the grant Contract:

Title of the grant Contract:

Name and address of the Beneficiary:

Request for payment number:

Period covered by the request for payment:

Dear Sir/Madam,

I hereby request < *[prefinancing instalment / interim instalment / payment of the final balance]*> under the Contract mentioned above.

The amount requested is <*as indicated in Article 4.1 of the grant Contract/the following: ...*>.

Please find attached the following supporting documents:

*<- expenditure verification report (for interim instalment / payment of the final balance)*

*- narrative and financial interim report (for interim instalment)*

*- narrative and financial final report (for payment of the final balance). >*

The amount covered by the expenditure verification report and claimed for deduction from the sum total of pre-financing [and interim instalment] under the contract is the following: ...

The payment should be made to the following bank account: <give the account number shown on the financial identification form annexed to the Contract[[12]](#footnote-12)>

**In case of clarifications needed regarding the payment request, the contact person is: <name>, <e-mail address>, <phone number>.**

***I hereby certify that the information contained in this payment request is complete, reliable and true, and is substantiated by adequate supporting documents that can be checked.***

***I hereby certify that the costs declared have been incurred in accordance with this Contract and that they can be considered as eligible in accordance with the Contract.***

Yours faithfully,

< *signature* >

1. Art. 30 of the 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 [↑](#footnote-ref-1)
2. OJ C 316, 27.11.1995, p. 48 [↑](#footnote-ref-2)
3. OJ C 195, 25.6.1997, p. 1 [↑](#footnote-ref-3)
4. Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54). [↑](#footnote-ref-4)
5. Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42). [↑](#footnote-ref-5)
6. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15). [↑](#footnote-ref-6)
7. Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3). [↑](#footnote-ref-7)
8. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1). [↑](#footnote-ref-8)
9. [↑](#footnote-ref-9)
10. 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 (OJ L 347, 20.12.2013, p. 320). [↑](#footnote-ref-10)
11. Commission Decision of 19 December 2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management for non-compliance with the rules on public procurement (C(2013)9527). [↑](#footnote-ref-11)
12. In case a different bank account has to be used a new financial identification form has to be timely submitted. [↑](#footnote-ref-12)