



EUROPEAN UNION



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

<Grant contract identification number>

Ministry of Regional Development and Housing
17 Apolodor Street, Bucharest, Romania

acting as the Joint Managing Authority for the Black Sea Basin Joint Operational Programme, ("the JMA")
of the one part,

and

<Full official name of the Beneficiary, as mentioned in the LES>

[<Legal status (organisation)>]

[<Organisation official registration number>]

<Full official address>

[VAT number, for VAT registered beneficiaries] ,
("the Beneficiary")

of the other part,

have agreed as follows:

Special conditions

Article 1 - Purpose

- 1.1 The purpose of this contract is the award of a grant by the JMA for the implementation of the Action entitled: <title of the Action> ("the Action") described in Annex I. The grant is financed from the European Neighbourhood and Partnership Instrument (ENPI) in the framework of the cross-border cooperation programme for the Black Sea Basin
- 1.2 The Contract is signed in accordance with the decision of the Joint Monitoring Committee of the Black Sea Basin Joint Operational Programme from <date/month/year> to award a grant to the Action.
- 1.3 The Beneficiary will be awarded the grant on the terms and conditions set out in this contract, which consists of these special conditions ("Special Conditions") and the annexes, which the Beneficiary hereby declares it has noted and accepted.
- 1.4 The Beneficiary accepts the grant and undertakes to carry out the Action under its own responsibility.
- 1.5 The Beneficiary receives the ENPI Grant from the JMA and ensures it is managed and distributed in accordance with the Special Conditions and its annexes.

Article 2 - Implementation period of the Action



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- 2.1 This contract shall enter into force on the date when the last of the two Parties signs. The Beneficiary undertakes to sign the contract within 30 days as from the date of its reception from the JMA.
- 2.2 Implementation of the Action shall begin on:
choose one of the following:
 - the day following that on which the last of the two Parties signs
 - a later date,
- 2.3 The Action's implementation period, as laid down in Annex I, is <number of months>.
- 2.4 The execution period of this contract will end at the moment when final payment is paid by the JMA and in any case at the latest 18 months as from the end of the implementation period as stipulated in art 2.3 above.

Article 3 - Financing the Action

- 3.1 The total eligible cost of the Action¹ is estimated at <... ..EURO >, as set out in Annex III.
- 3.2 The JMA undertakes to finance a maximum of <... ..EURO >, equivalent to 90% of the estimated total eligible cost of the Action; the final amount of the eligible costs shall be established in accordance with Articles 14 and 17 of Annex II.
- [3.3 Pursuant to Article 14.4 of the Annex II, <...>% (maximum 7%) of the final amount of direct eligible costs of the Action established in accordance with Articles 14 and 17 of the Annex II, may be claimed by the Beneficiary as indirect costs without increasing the amount specified in article 3.2.]
- 3.4 Pursuant to Article 14.6 of Annex II, the Regulation under which this contract is financed authorises payment of taxes, including VAT, in the case the Beneficiary can show it cannot reclaim,.

Article 4 - Reporting and payment arrangements

- 4.1 Progress, Interim and final reports shall be produced, in compliance with Articles 2 and 15.1 of Annex II.
- 4.2 Payment will be made in accordance with Article 15 of Annex II. Of the options referred to in Article 15.1, the following will apply:

Option 1 (Actions with an implementation period not exceeding 12 months and where the financing provided by the JMA is between EUR 50 000 and 100 000)

Pre-financing payment: <... ..EURO >(80% of the ENPI Grant foreseen for the implementation of the Action as set out in Annex III)

Forecast final payment (subject to the provisions of Annex II): <... ..EURO > (maximum 20% or the balance of the ENPI Grant foreseen for the implementation of the Action as set out in Annex III)

Option 2 (Actions with an implementation period not exceeding 24 months and where the financing provided by the JMA is over EUR 100 000 and up to 700 000)

First instalment of pre-financing <... ..EURO > (30% of the ENPI Grant foreseen for the implementation of the Action as set out in Annex III)

¹ Please note that this article refers only to the ENPI part of the Action, in case of a joint Action with Turkish partners.



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Forecast second instalment(s) of pre-financing: <...EURO > (maximum 50% of the ENPI Grant foreseen for the implementation of the Action as set out in Annex III)

(subject to the provisions of Annex II)

Forecast final payment (maximum 20% or the balance of the ENPI Grant foreseen for the implementation of the Action as set out in Annex III)

(subject to the provisions of Annex II): <...EURO >

- 4.3 In case where the pre-financing instalments are to be paid by the JMA, the first instalment of pre-financing will be paid to the Beneficiary within 45 days, as from the date of reception by the JMA of signed contract accompanied by the financial guarantee if required in accordance with article 15.7 of the General Conditions.
- 4.4 The Beneficiary shall transfer the corresponding amounts of the Grant to its partners without delay as from the date of receipt of the installment of Grant, proportionally to each partner's contribution to the Action, without making any deduction, retention or further specific charge, and shall submit the proof of transfer to JMA within 7 days.
- 4.5 Subject to Article 25 of Commission Regulation (EC) No 951/2007 of 9 August 2007 laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument ("Regulation no.951/2007"), the JMA shall make each payment under the condition of availability of funds due to it from the European Commission.

Article 5 - Contact addresses

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

For the JMA:

Ministry of Regional Development and Housing
General Directorate for European Territorial Cooperation
Directorate for International Territorial Cooperation
Bulevardul Libertatii nr. 12
040129 Bucuresti, sector 5
Romania

For the Beneficiary

<address of the Beneficiary for correspondence>

5.2 The Beneficiary has to inform JMA about the audit firms (in case of a Beneficiary or partner located in a Partner Country) and/or control entities (in case of a Beneficiary or partner located in Member State) which will carry out the verifications of expenditure referred to in Article 15.6 of Annex II (*name, contact responsible person, address, telephone and fax numbers*). The Beneficiary shall notify in this respect the JMA as soon as possible, but not later than 45 days after the signature of this Contract.



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Article 6 - Annexes

6.1 The following documents are annexed to these Special Conditions and form an integral part of the contract:

- Annex I: Description of the Action
- Annex II: General Conditions applicable to European Community-financed grant contracts for external Actions
- Annex III: Budget for the Action
- Annex IV: Contract-award procedures
- Annex V: Standard request for payment and financial identification form
- Annex VI: Model narrative (progress) and financial report
- Annex VII: Model report of factual findings and terms of reference for an expenditure verification of a grant contract
Model report of factual findings and terms of reference for a consolidated expenditure verification of a grant contract

[Annex VIII: Model financial guarantee]

6.2 In the event of conflict between the provisions of the Annexes and those of the Special Conditions, the provisions of the Special Conditions shall take precedence. In the event of conflict between the provisions of Annex II and those of the other annexes, those of Annex II shall take precedence.

Article 7 - Other specific conditions applying to the Action

7.1 The General Conditions are supplemented by the following:

7.1.1 The last paragraph of Article 1.3 of the General Conditions shall be replaced as follows:

The Beneficiary alone shall be accountable to the Joint Managing Authority for the implementation of the Action. It shall undertake that the conditions applicable to it under Articles 1, 3, 4, 5, 6, 7, 8, 10, 14, 16 and 17 shall also apply to its partners, and those applicable under Articles 1, 3, 4, 5, 6, 7, 8, 10 and 16 to all its subcontractors. In particular, the Beneficiary should undertake that the conditions applicable to it under Article 18.5 on the recovery procedure by the EU Member States and the Commission shall also apply to its partners. It shall include provisions to that effect as appropriate in its contracts with them.

7.1.2 Article 18 of the General Conditions shall be supplemented as follows:

18.5. *Where the Joint Managing Authority is unable to recover the debt within one year of issuing the recovery order and the recovery relates to a claim against a beneficiary or partner established in an EU Member State, the EU Member State in which the beneficiary or partner is established shall pay the amount owing to the Joint Managing Authority and claim it back from the beneficiary or partner.*

Where the Joint Managing Authority is unable to recover the debt within one year of the issuing of the recovery order and the recovery relates to a claim against a beneficiary or partner established in a partner country, the Joint Managing Authority shall refer the case to the European Commission, which, on the basis of a complete file, shall take over the task of recovering the amounts owing from the beneficiary or partner established in the partner country or directly from the national authorities of that country.



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7.1.3 In the Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18 of General Conditions set out in Annex II all references to “the Contracting Authority” shall be deemed to be references to “the Joint Managing Authority (the JMA)”.

7.1.4 In the Article 10 of General Conditions set out in Annex II the reference to “the Contracting Authority” shall be deemed to be reference to “the Joint Monitoring Committee (the JMC)”.

7.1.5 In the Article 11.6 of General Conditions set out in Annex II the reference to “the European Commission” shall be deemed to be reference to “the Joint Managing Authority (the JMA)”.

7.1.6 Article 3 of the General Conditions set out in Annex II shall be supplemented with the following paragraph:

3.3. The Beneficiary is liable towards the JMA for ensuring that all its partners and subcontractors fulfill their obligations under this contract. It is also liable towards the JMA for any infringements of obligations under this contract by its partners and subcontractors in the same way as for its own conduct.

7.1.7 Article 6.1 of the General Conditions set out in Annex II shall be read as follows:

6.1. Unless the European Commission agrees or requests otherwise, the Beneficiary must take all necessary steps to publicise the fact that the European Union has financed or cofinanced the Action. Such measures must comply with the Communication and Visibility Manual for EU External Actions laid down and published by the Commission and with the Visual Identity Manual for Joint Operational Programme « Black Sea 2007-2013 ».

7.1.8 Article 12.7 of the General Conditions set out in Annex II shall be read as follows:

12.7. This Contract shall be terminated automatically if it has not given rise to any payment by the JMA within three years of its signature and the JMC will be notified by the JMA concerning eventual decisions to terminate a contract.

7.1.9 Article 2.3 of the *Procurement by grant Beneficiaries in the context of European Community external actions* set out in Annex IV shall be supplemented with the following paragraph:

Derogations as provided for in paragraph 2 may be justified on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.

7.1.10 The first paragraph of Article 1.3 of General Conditions shall be supplemented as follows:

In duly justified cases, the subcontracting limit does not apply to Actions focused on investment activities, notably to Large Scale Projects with an infrastructure component.

7.2 The following derogations from the General Conditions shall apply:

7.2.1 *By derogation from Article 1.3, the first paragraph shall be read as follows:*

The Beneficiary shall act in partnership with the Partners identified in the Description of the Action. The Beneficiary and its partners may subcontract a limited portion of the Action to third parties. The bulk of the Action must, however, be undertaken by the Beneficiary and its partners.

7.2.2 *By derogation from Article 1.4, the following paragraph shall be read as follows:*

The Beneficiary and the JMA are the only parties (the “Parties”) to this Contract. Where the European Commission is not the Contracting Authority, it is not Party to this Contract, which confers on it only the rights and obligations explicitly mentioned therein. Nevertheless the grant is financed from the European Communities’ budget, and the provisions in this Contract on visibility shall apply accordingly.



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7.2.3 By derogation from Article 2.1, the following paragraph shall be read as follows:

The Beneficiary must provide the JMA with all required information on the implementation of the Action. To that end, the Beneficiary must draw up **narrative progress reports**, interim reports and a final report. These reports shall consist of a narrative section and a financial section and shall conform to the model in Annex VI. They shall cover the Action as a whole, regardless of which part of it is financed by the JMA. Each report must provide a full account of all aspects of the Action's implementation for the period covered. The proofs of the transfers of ownership referred to in Art 7.3 are also annexed to the final report.

7.2.4 By derogation from Article 2.3, the following paragraphs shall be read as follows:

The reports shall be drafted in English language. They shall be submitted to the JMA at the following intervals:

- for grants of 50.000 up to 100.000 and up to 12 months:
 - a narrative progress report conforming to the model in Annex VI and covering every 4 months of the implementation period of the Action which shall be forwarded no later than one month after the above period has elapsed ;
 - a final report consisting of a narrative and financial section conforming to the model in Annex VI shall be forwarded no later than three months after the implementation period as defined in Article 2 of the Special Conditions;

- for grants over 100.000 up to 700.000 and up to 24 months :
 - a narrative progress report conforming to the model in Annex VI and covering every 4 months of the implementation period of the Action which shall be forwarded no later than one month after the above period has elapsed ;
 - an interim report consisting of a narrative and financial section conforming to the model in Annex VI must accompany every request for payment;
 - the final report consisting of a narrative and financial section conforming to the model in Annex VI shall be forwarded no later than three months after the implementation period as defined in Article 2 of the Special Conditions.

If there is an overlapping between the dates when the narrative progress report and the interim report or the final report, are due, only the interim or the final report shall be drawn up and submitted to the JMA.

7.2.5 By derogation from Article 4, the following paragraphs shall be read as follows:

The Beneficiary undertakes to take all necessary precautions to avoid conflicts of interests and shall inform the JMA, in writing, without delay of any situation constituting or likely to lead to any such conflict. The Beneficiary shall immediately take all necessary measures to neutralise any situation giving rise to a conflict of interest and shall take appropriate actions to remedy any negative effects of the conflict of interest within 30 days from the notification of the JMA.

For the purpose of this Grant 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.

7.2.6 By derogation from Article 5, the following paragraph shall be read as follows:

Subject to Article 16, the JMA and the Beneficiary undertake to preserve the confidentiality of any document, information or other material communicated to them in confidence until at least seven years after the final payment. The European Commission will have access to all documents communicated to the JMA and will maintain the same confidentiality.

7.2.7 By derogation from Article 7, the following paragraphs shall be read as follows:



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7.1. Ownership of, and title and intellectual and industrial property rights to, the Action's results, reports and other documents relating to it shall be vested in the Beneficiary and its partners, unless mutually agreed otherwise.

7.2. Notwithstanding the provisions of Article 7.1 and subject to Article 5, the Beneficiary grants the JMA and the European Commission the right to use freely and as it sees fit all documents deriving from the Action, whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.

7.3. Where a partner is located outside the Programme's eligible area and unless otherwise specified in the Special Conditions, the equipment, vehicles and supplies purchased by that partner and paid for by the Budget for this part of the Action must be transferred to the Beneficiary and/or any partners located inside the Programme's eligible area and/or the final recipients of the Action, at the latest by the end of the implementation of the Action. Copies of the proofs of transfers of equipments and vehicles, the purchase cost of which was more than 5 000 Euros per item, must be attached to the final report. Such proofs must be kept for control in all other cases.

7.2.8 By derogation from Article 8.1, the following paragraph shall be read as follows:

If the JMA or the European Commission carries out an interim or ex post evaluation or a monitoring mission, the Beneficiary and its partners 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 16.2.

7.2.9 By derogation from Article 9, the following paragraphs shall be read as follows :

9.1. Any amendment to the Contract, including the annexes thereto, must be set out in writing in an addendum. This Contract can be modified only during its execution period.

If an amendment is requested by the Beneficiary, it must submit that request to the JMA two months before the date on which the amendment should enter into force, unless there are special circumstances duly substantiated by the Beneficiary and accepted by the JMA.

9.2. However, where the amendment to the Budget or Description of the Action does not affect the basic purpose of the Action and the financial impact is limited to a transfer between items within the same main budget heading including cancellation or introduction of an item, or a transfer between main budget headings involving a variation of 15% or less of the amount originally entered (or as modified by addendum) in relation to each concerned main heading for eligible costs, the Beneficiary may amend the budget of the Action and inform in writing in 7 days the JMA accordingly. This method may not be used to amend the headings for administrative costs or the contingency reserve.

Changes of address, changes of bank account and changes of auditor may simply be notified, although this does not stop the JMA from opposing the Beneficiary's choice of bank account or auditor.

The JMA reserves the right to require that the auditor referred to in Article 5.2 of the Special Conditions be replaced if considerations which were unknown when the Contract was signed cast doubt on the auditor's independence or competence to undertake the assignment.

7.2.10 By derogation from Article 11.1, the following paragraph shall be read as follows:

The implementation period of the Action is laid down in Article 2 of the Special Conditions. The Beneficiary must inform the JMA without delay of any circumstances likely to hamper or delay the implementation of the Action. The Beneficiary may request an extension of the Action's implementation period no later than two months before it ends. The request must be accompanied by all the supporting evidence needed for its appraisal and must be approved by the Joint Monitoring Committee.

7.2.11 By derogation from Article 12.2, the following paragraphs shall be read as follows:

The JMA may terminate the Contract, without giving notice and without paying compensation of any kind:



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- a) where the Beneficiary or any of its partners fails, without justification, to fulfil any of the obligations incumbent on it and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of sending of the letter;
- b) where the Beneficiary or any of its partners is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- c) where the JMA has evidence on the Beneficiary or any of its partners or any related entity or person, of professional misconduct;
- d) where the JMA has evidence on the Beneficiary or any of its partners or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Community's financial interests;
- e) where the Beneficiary or any of its partners changes legal personality, unless an addendum recording that fact is drawn up;
- f) where the Beneficiary or any of its partners does not comply with Articles 4, 10 and 16;
- g) where the Beneficiary or any of its partners makes false or incomplete statements to obtain the grant provided for in the Contract or provides reports that do not reflect reality;
- h) where the Beneficiary or any of its partners has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
- i) where the JMA has evidence on the Beneficiary or any of its partners or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant;

In the cases referred to in points (c), (d) and (i) above, any related person shall mean any physical person with powers of representation, decision-making or control in relation to the Beneficiary or any of its partners. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive n° 83/349/EEC of 13 June 1983.

7.2.12 By derogation from Article 12.3., the following paragraph shall be read as follows:

The Beneficiary or any of its partners who has made false declarations, has made substantial errors or committed irregularities and fraud, or has been found in breach of its contractual obligations may be excluded from all contracts financed by the JMA for a maximum of five years from the date on which the infringement is established, as confirmed following the adversarial procedure with the Beneficiary. This period can be extended to 10 years in the event of a repeated offence within 5 years of the date referred above.

For the purpose of this article, "substantial error" shall mean any modification which adversely affects the nature or the implementation of the Action or confers an undue advantage to a third party.

7.2.13 By derogation from Article 13, the following paragraphs shall be read as follows:

13.1. This Contract shall be governed by the law of Romania, which is the seat of the JMA.

13.2. The Parties shall do everything possible to settle amicably any dispute arising between them during 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. A Party must reply to a request for an amicable settlement within 30 days from the receiving date of the notification. Once this period has expired, or if the attempt to reach amicable settlement has not produced agreement within 120 days of the first request for an amicable settlement, each Party may notify the other that it considers the procedure to have failed.



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13.3. In the event of failure to reach an amicable agreement, the dispute may by common agreement of the Parties be submitted to the conciliation of the European Commission if it is not the JMA. If no settlement is reached within 120 days of the opening of the conciliation procedure, each Party may notify the other that it considers the procedure to have failed.

13.4. In the event of failure of the above procedures, each Party may submit the dispute to the courts of **Romania**.

7.2.14 By derogation from Article 14, the following paragraphs shall be read as follows:

14.1. Eligible costs are costs actually incurred by the Beneficiary of this grant **and its partners** which meet all the following criteria:

d) they are identifiable and verifiable, in particular being recorded in the accounting records of the Beneficiary **and its partners** and determined according to the applicable accounting standards of the country where the Beneficiary **or its partners** are established and according to the usual cost accounting practices of the Beneficiary **or its partners**,

14.2. Subject to the above and where relevant to the provisions of Annex IV being respected, the following direct costs of the Beneficiary and its partners shall be eligible:

- the cost of staff assigned to the Action, corresponding to actual gross salaries including **statutory deductions²** and other remuneration-related costs; salaries and costs must not exceed those normally borne by the Beneficiary or its partners, as the case may be, unless it is justified by showing that it is essential to carry out the action;
- travel and subsistence costs for staff and other persons taking part in the Action, provided they do not exceed those normally borne by the Beneficiary or its partners, as the case may be. Any flat-rate reimbursement of the subsistence costs must not exceed the rates set out in Annex III, which correspond to the scales published by the European Commission at the time of signing this contract;
- purchase (**new**) or rental (**new or used**) costs for equipment and supplies specifically for the purposes of the Action, and costs of services, provided they correspond to market rates;
- costs of consumables;
- subcontracting expenditure;
- costs deriving directly from the requirements of the Contract (dissemination of information, evaluation specific to the Action, **expenditure verification**, translation, reproduction, insurance, etc.) including financial service costs (in particular the cost of transfers and financial guarantees);
- **any other cost necessary for the implementation of the Action, in line with the national legislation and Budget of the Action.**

14.3. A contingency reserve not exceeding **2 %** of the direct eligible costs may be included in the Budget of the Action, **without increasing the total amount to be financed by the JMA, as referred to in art. 3.2 of in the Special Conditions.** It can be used only with the prior written authorisation of the JMA.

14.4. A fixed percentage not exceeding **7%** of the total amount of direct eligible costs of the Action may be claimed as indirect costs to cover the administrative overheads incurred by the Beneficiary for the Action, **without increasing the total amount to be financed by the JMA, as referred to in art. 3.2 of in the Special Conditions.** The flat-rate funding in respect of indirect costs does not need to be supported by accounting documents.

Indirect costs are eligible provided that they do not include costs assigned to another heading of the budget of this Contract.

14.5. Any contributions in kind, which must be listed separately at Annex III, do not represent actual expenditure and are not eligible costs. Unless otherwise specified in the Special Conditions, the

² According to their respective national legislation.



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contributions in kind may not be treated as co-financing by the Beneficiary or its partners. The cost of staff assigned to the Action is not a contribution in kind and may be considered as co-financing in the Budget of the Action when paid by the Beneficiary or its partners.

Notwithstanding to the above, if the Description of the Action foresees the contributions in kind, such contributions have to be provided.

7.2.15 By derogation from Article 15, the following paragraphs shall be read as follows:

15.1. Payment procedures are set out in Article 4 of the Special Conditions and correspond to one of the two options below:

Option 1: Actions with an implementation period not exceeding 12 months and where the financing provided by the JMA is between EUR 50 000 and 100 000

The JMA will pay the grant to the Beneficiary in the following manner:

- pre-financing of 80% of the sum referred to in Article 3.2 of the Special Conditions following the provisions in Article 4.3 of the Special Conditions.
- the balance representing maximum 20% of the sum referred to in Article 3.2 of the Special Conditions within 45 days of the Contracting Authority approving the final report in accordance with Article 15.2, accompanied by an expenditure verification report and by a request for payment of the balance conforming to the model in Annex V.

The balance shall constitute the remaining amount of the Grant entitled to the Beneficiary as based on the total accepted eligible costs of the part of the Action and balanced with the installment of pre-financing.

Option 2: Actions with an implementation period not exceeding 24 months and where the financing provided by the JMA is over EUR 100 000 and up to 700 000

The JMA shall pay the grant to the Beneficiary in the following manner:

- an initial pre-financing instalment of 30% of the sum referred to in Article 3.2 of the Special Conditions, as specified in Article 4 of the Special Conditions, following the provisions in Article 4.3 of the Special Conditions.
- further pre-financing installment representing maximum 50% of the sum referred to in Article 3.2 of the Special Conditions, within 45 days of the JMA approving an interim report in accordance with Article 15.2, accompanied by:
 - a request for payment conforming to the model in Annex V,
 - an expenditure verification report under Article 15.6,
 - a financial guarantee if required under Article 15.7;
- the balance representing maximum 20% of the sum referred to in Article 3.2 of the Special Conditions within 45 days of the JMA approving the final report in accordance with Article 15.2, accompanied by:
 - a request for payment of the balance conforming to the model in Annex V,
 - an expenditure verification report required under Article 15.6.

The balance shall constitute the remaining amount of the Grant entitled to the Beneficiary as based on the total accepted eligible costs of the part of the Action and balanced with the installment of pre-financing.

Further pre-financing may only be given if the part of the expenditure actually incurred which is financed by the JMA (by applying the percentage set out in Article 3.2 of the Special Conditions) stands at 70% at least of the previous payment (and at 100% of any previous payments) as supported by the corresponding interim report and by an expenditure verification report as specified in Article 15.6.



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Where the consumption of the previous pre-financing is less than 70%, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing payment.

The total sum of pre-financing under the Contract may not exceed **80%** of the amount referred to in Article 3.2 of the Special Conditions.

15.4. Once the time-limit referred to above has expired, the Beneficiary - unless the Beneficiary is a government department or public body in a Community Member State - may, within two months of receipt of the late payment, claim default interest **at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, on the first day of the month in which the time-limit expired, plus three and a half percentage points.** The interest shall be payable for the time elapsed between the expiry of the payment deadline and the date on which the JMA's account is debited. This interest is not considered income for the purposes of Article 17.3. Any partial payments shall first cover the default interest thus established.

15.5. Where the award procedure or performance of the contract is vitiated by substantial errors or irregularities or by fraud attributable to the Beneficiary **or its partners**, the JMA may refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud. The JMA may also suspend payments in cases where there are suspected or established errors, irregularities or fraud committed by the Beneficiary **and its partners** in the performance of another contract funded by the general budget of the European Community or by budgets managed by it which are likely to affect the performance of the present contract. Suspension shall take effect when the **notification** is sent by the JMA.

15.6. A report on the verification of the Action's expenditure - conforming to the model in Annex VII (Annex 3A) - produced by a **designated controller (in case of a Beneficiary or partners located in Member State) or by an approved auditor (in case of a Beneficiary or partners located in a Partner Country)** who meets the specific conditions of the Terms of Reference for the expenditure verification - shall be attached to:

- **any request for further pre-financing payments;**
- **any final report;**

The Beneficiary and its partners shall have different auditors/controllers for each partner. Thus the Beneficiary will submit to the JMA the report for consolidated expenditure verification with all the factual findings from all auditors/controllers, conforming to the model in Annex VII (Annex 3B). Each individual report will be attached to it as an annex.

The auditor/controller examines whether the costs declared by the Beneficiary are real, accurately recorded and eligible in accordance with the Contract, as well as the revenue of the Action and issues an expenditure verification report conforming to the model in Annex VII (Annex 3A).

The Beneficiary grants the auditor/controller all access rights mentioned in Article 16.2.

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

Based on the consolidated expenditure verification report - conforming to the model in Annex VII (Annex 3B) - the JMA determines the total amount of eligible expenditure and the amount of JMA funding, according to the provisions in article 3.2. of Special Conditions. The total sum of pre-financing under the Contract is deducted from the total amount of JMA funding to establish the payable balance (clearance).

15.9. The JMA shall make payments **in euro**, in accordance with the Special Conditions. **Any conversion into euro** of the real costs borne in other currencies shall be done at the rate made up by the average of the rates published in InforEuro for the months covered by the relevant report, unless otherwise provided in the Special Conditions.



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In the event of an exceptional exchange-rate fluctuation, the Parties shall consult each other with a view to restructuring the Action in order to lessen the impact of such a fluctuation. Where necessary, the JMA may take additional measures.

Any interest or equivalent benefits accruing from pre-financing paid by the JMA to the Beneficiary shall be mentioned in the interim and final reports. **Any interest accruing from pre financing paid by the JMA shall be assigned to the Action and deducted from the payment of the balance of the amounts due to the Beneficiary, unless the JMA requests the Beneficiary to reimburse the interest generated by pre-financing payments before the payment of the balance.**

Interest shall not be due to the JMA for pre-financing paid to the EU Member States.

Article 15.10 and 15.12 shall not be applicable.

15.13. All references to days in this Grant contract are to calendar days.

7.2.16 By derogation from Article 16, the following paragraphs shall be read as follows:

16.1. The Beneficiary and its partners shall keep accurate and regular accounts of the implementation of the action using an appropriate accounting and double-entry book-keeping system. **This should not lead to double registration of operations and inadequate bookkeeping.** This system may either be an integrated part of the Beneficiary's and partners' regular system or an adjunct to that system. This system shall be run in accordance with the accounting and bookkeeping policies and rules that apply in the country concerned. Accounts and expenditure relating to the Action must be easily identifiable and verifiable. This can be done by using separate accounts for the Action concerned or by ensuring that expenditure for the action concerned can be easily identified and traced to and within the Beneficiary's and partners' accounting and bookkeeping systems. Accounts must provide details of interest accruing on funds paid by the JMA.

The Beneficiary shall ensure that the Financial Report (both interim and final) as required under Article 2 can be properly and easily reconciled to the Beneficiary's accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose the Beneficiary shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification.

16.2. The Beneficiary will allow the European Commission, the European Anti-Fraud Office, the European Court of Auditors, **the JMA** and any controller or external auditor authorised by the JMA carrying out verifications as required per Article 15.6 and per **Article 37 of Commission Regulation (EC) No 951/2007 of 9 August 2007 laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument ("Regulation no.951/2007")** to verify, by examining the documents or by means of on-the-spot checks, the implementation of the Action and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the Action. These inspections may take place up to 7 years after the payment of the balance. **The Beneficiary ensures that all documents related to the implementation of the project are made available until the above final dates of possible inspections.**

Furthermore, the Beneficiary will allow the European Anti-Fraud Office, **the JMA** and any controller or external auditor authorised by the JMA carrying out verifications as required per Article 15.6 and per **Article 37 of Regulation no. 951/2007** to carry out checks and verification on the spot in accordance with the procedures set out in the European Community legislation for the protection of the financial interests of the European Communities against fraud and other irregularities

To this end, the Beneficiary undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors as well as to **the JMA** and to any controller or external auditor authorised by the JMA carrying out verifications as required per Article 15.6 and per **Article 37 of Regulation no. 951/2007** to the sites and locations at which the Action is implemented, including its information systems, as well as all documents and databases



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concerning the technical and financial management of the Action and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors, the JMA and to any controller or external auditor authorised by the Contracting Authority carrying out verifications as required per Article 15.6 and per Article 37 of Regulation no. 951/2007 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. Documents must be easily accessible and filed so as to facilitate their examination and the Beneficiary must inform the JMA of their precise location.

The Beneficiary guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors as well as of any controller or external auditor authorised by the Contracting Authority carrying out verifications as required per Article 15.6 to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article 16, to the Beneficiary's and its partners' subcontractors. Where a partner or subcontractor is an international organisation, any verification agreement concluded between such organisation and the European Commission applies.

16.3. In addition to the reports mentioned in article 2, the documents referred to in Article 16.2 include, but are not limited to:

- Accounting records (computerised or manual) from the Beneficiary's and partners' accounting system such as general ledger, sub ledgers and payroll accounts, fixed assets registers and other relevant accounting information;
- Proof of procurement procedures such as tendering documents, bids from tenderers and evaluation reports;
- Proof of commitments such as contracts and order forms;
- Proof of delivery of services such as approved reports, time sheets, transport tickets (including boarding passes), proof of attending seminars, conferences and training courses (including relevant documentation and material obtained, certificates), etc;
- Proof of receipt of goods such as delivery slips from suppliers;
- Proof of completion of works, such as acceptance certificates;
- Proof of purchase such as invoices and receipts.
- Proof of payment such as bank statements, debit notices, proof of settlement by the subcontractor;
- For fuel and oil expenses, a summary list of the distance covered, the average consumption of the vehicles used, fuel costs and maintenance costs;
- Staff and payroll records such as contracts, salary statements, time sheets. For local staff recruited on fixed-term contracts, details of remuneration paid, duly substantiated by the person in charge locally, broken down into statutory deductions³ (e.g. gross salary, social security charges, insurance and net salary, etc). For expatriate and/or European-based staff (if the action is implemented in Europe) analyses and breakdowns of expenditure per month of actual work; assessed on the basis of unit prices per verifiable block of time worked and broken down into statutory deductions (gross salary, social security charges, insurance and net salary).

7.2.17 By derogation from Article 17, the following paragraphs shall be read as follows:

17.3 The Beneficiary and its partners accept that the grant can under no circumstances result in a profit for itself and that it must be limited to the amount required to balance income and expenditure for the Action. Profit shall be defined as a surplus of actual income over the actual expenditure of the Action in question when the request is made for payment of the balance.

These provisions shall not apply to study, research or training scholarships paid to natural persons, nor in the case of prizes awarded following contests.

17.4. In addition and without prejudice to the right to terminate the Contract in accordance with Article 12.2, the JMA may, by a reasoned decision, if the Action is not implemented or is implemented poorly,

³ According to the Beneficiary/partner's national legislation.



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partially or late, reduce the grant initially provided for in line with the actual implementation of the Action on the terms laid down in this Contract.

7.2.18 By derogation from Article 18, the following paragraphs shall be read as follows:

18.1. Where the JMA's contribution to the final accepted cost of the Action is lower than the sum of pre-financing and interim payments already transferred by the JMA to the Beneficiary, the JMA shall issue a debit note to the Beneficiary for any amounts paid in excess of the final amount due.

18.2. The Beneficiary undertakes to repay any amounts paid in excess of the final amount due to the JMA within 45 days of the issuing of the debit note, the latter being the letter by which the JMA requests the amount owed by the beneficiary.

18.3. Should the Beneficiary fail to make repayment within the deadline set by the JMA, the JMA may increase the amounts due by adding interest at the rate applied by the European Central Bank to its main refinancing transactions in euro, on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the JMA, and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.

18.4. Amounts to be repaid to the JMA may be offset against amounts of any kind due to the Beneficiary. This shall not affect the Parties' right to agree on payment in instalments. Where necessary the European Community may as a donor subrogate itself to the JMA.

If the JMA demands repayment of Grant funds in accordance with this contract, the Beneficiary shall be liable to the JMA for the total amount of the Grant under this contract, including the share of the Grant entitled to its partners.

18.6 In this case, the Beneficiary undertakes to repay any amounts paid in excess of the final amount due or identified following a control or an audit, to the European Commission or to the Member State, as the case may be.

18.7. Bank charges incurred by the repayment of amounts due to the JMA shall be borne entirely by the Beneficiary.

7.2.19 By derogation from Article 2.1 of the Procurement by grant Beneficiaries in the context of European Community external actions set out in Annex IV, the following paragraphs shall be read as follows:

2.1 The nationality rule

This contract is financed from the European Neighbourhood and Partnership Instrument. Pursuant to Article 21.1 of the *Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument*, participation in the award of procurement or grant contracts financed under this Regulation shall be open to all natural persons who are nationals of, and legal persons established in, a Member State of the Community, a country that is a beneficiary of this Regulation, a country that is a beneficiary of an Instrument for Pre-Accession Assistance set up by *Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (4)*, a Member State of the EEA or international organisations.

Tenderers must state, in the tender, the country of which they are nationals by presenting the usual proof of nationality under their national legislation.

7.2.20 By derogation from Article 2.2 of the Procurement by grant Beneficiaries in the context of European Community external actions set out in Annex IV, the following paragraphs shall be read as follows:



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2.2 The rule of origin

The tenderer must state the origin of supplies.

This contract is financed from the European Neighbourhood and Partnership Instrument. Pursuant to Article 21.1 of the *Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument*, all supplies and materials purchased under contracts financed under this Regulation shall originate in a Member State of the Community, a country that is a beneficiary of this Regulation, a country that is a beneficiary of an Instrument for Pre-Accession Assistance set up by *Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (4)* or a Member State of the EEA.

7.2.21 *By derogation from Article 8.2 of the Procurement by grant Beneficiaries in the context of European Community external actions set out in Annex IV, the following paragraphs shall be read as follows:*

8.2 Beneficiaries and Partners from the Member States

Where the Beneficiary or a partner is a contracting authority and/or a contracting entity within the meaning of the Community Directives⁴ /national legislation⁵ applicable to procurement procedures, it must apply the relevant provisions of those texts, in preference to the rules set out in 3 to 7. In all cases, the general principles and rules on nationality and origin set out in 2 still apply.

Done in English in three originals, <two originals being for the JMA and one original being for the Beneficiary.

For the Beneficiary

Name

Title

Signature

Date

Name

For the JMA

Name

Title

Signature

Date

⁴ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0114:0240:EN:PDF>).

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0017:20080915:EN:PDF>)

⁵ **For Romania:** Governmental Emergency Ordinance no 34/2006 regarding the award of the public procurement contracts, public works concession contracts and services concession contracts, with further amendments

For Greece: Law 3263/2004 Tendering of Public Works

Law 3316/2005 Public contracts for studies and services (infrastructure projects)

Law 2286/1995 Public Procurement Law

Presidential Decree 118/2007 Public Procurement Regulation

Presidential Decree 60/2007 Adaptation of the Greek legislation to Directive 2004/18/EC (on public procurement for works, supplies and services)

Presidential Decree 59/2007 Adaptation of the Greek legislation to Directive 2004/17/EC

For Bulgaria: Public Procurement Law, published, SG No. 28/06.04.2004 with further amendments;

Rules for the implementation of the Public Procurement Law;

Ordinance for the Award of Small Public Contracts;

Council of Ministers Decree No 55/2007 laying down the provisions for the award of service, supply and works contracts by EU Structural Funds and PHARE Programme grant beneficiaries.



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Title

Signature

Date