

# Subsidy Contract

Place for the Programme logo.....under ERDF

objective: European Territorial Cooperation

**Subsidy Contract No.....<sup>1</sup>**

**on implementation of the Project .....<sup>2</sup>**

**within the Cross-Border Co-operation South Baltic Programme 2007-2013**

signed in ..... on..... (day, month, year)

by and between:

The Minister of Regional Development, ul. Wspólna 2/4, 00-926 Warsaw, Poland, acting as a Managing Authority designated in the Operational Programme Cross-Border Co-operation South Baltic Programme 2007-2013, hereinafter referred to as “Managing Authority”,

represented by:

.....,

on the basis of the power of attorney dated ..... attached to the Subsidy Contract and

.....<sup>3</sup>, acting as Lead Beneficiary,

represented by:

.....,

on the basis of ..... dated .....<sup>4</sup>

attached to the Subsidy Contract

in accordance with the following documents:

• The EU regulations, in particular:

1. *Council Regulation (EC) No. 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, repealing the Regulation (EC) 1260/1999 (O.J. L 210 dated 31.7.2006), hereinafter referred to General Regulation;*
2. *Regulation (EC) No. 1080/2006 of the European Parliament and Council of 5 July 2006 on the European Regional Development Fund, repealing the Regulation (EC)1783/2006 (O.J. L 210 dated 31.7.2006), hereinafter referred to ERDF Regulation;*

<sup>1</sup> Please enter the number assigned by the Managing Authority

<sup>2</sup> Please enter the name and the number of the Project assigned by the Joint Technical Secretariat.

<sup>3</sup> The name of the Lead Beneficiary, address (and other details depending on the legal status of the Lead Beneficiary, e.g. in case of a Polish entity REGON and NIP).

<sup>4</sup> Please enter the document defining the power of attorney of the Lead Beneficiary, according to the national requirements of the Member State hosting the Lead Beneficiary.

3. Council Regulation (EC) No. 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation No. 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (O.J. L 371 dated 27.12.2006), hereinafter referred to *Implementing Regulation*;

• And the following documents:

1. Operational Programme for the South Baltic Cross-Border Co-operation Programme 2007-2013 (hereinafter referred to as Operational Programme), approved by the Decision of European Commission No. C (2007) 6499 dated on 20<sup>th</sup> December 2007;
2. The Description of the management and control system set up pursuant to the provisions of Title VI of the Regulation (EC) No. 1083/2006;
3. Communication plan prepared by the Managing Authority pursuant to the provisions of Title 2 of the Implementing Regulation;
4. *Eligibility Guidelines adopted for the Programme in each Member State hosting Project partners:.....*<sup>5</sup> ;
5. The Programme Manual approved by the Monitoring Committee on ..... published on the website of the Programme (<http://www.interreg.gov.pl/20072013/EWT/transgraniczne/baltyk>).

**The Parties agree as follows:**

## § 1.

### DEFINITIONS

1. Each time the Subsidy Contract refers to:

- 1) Fund – this shall mean the European Regional Development Fund (ERDF);
- 2) Programme – this shall mean South Baltic Cross-Border Co-operation Programme 2007-2013;
- 3) Application Form – this shall mean the Application for financial support from the Programme together with all attachments, approved by the Steering Committee on ..... No. ....;
- 4) Project – this shall mean the operation defined in the Application Form, implemented within the Programme based on the present Subsidy Contract;
- 5) National controllers – this shall mean the controllers set up in a given Member State pursuant to art. 16 item 1 of the ERDF Regulation;
- 6) Partners – this shall mean the entities indicated in the Application Form, which are an individual, legal persons or an organisational units with legal identity, who participate in the Project implementation;
- 7) Subsidy – this shall mean funds originating from the Fund, transferred to the bank account of the Lead Beneficiary;

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<sup>5</sup> Please enter the full name of eligibility guidelines adopted in each Member State hosting a Project partner – if any.

- 8) National co-financing – this shall mean the own contribution of the partners in the total costs of the Project, defined in the Application Form;
- 9) Eligible costs – this shall mean costs deemed as eligible pursuant to the Implementing Regulation [*Eligibility Guidelines adopted for the Programme in each Member State hosting Project partners:....*<sup>6</sup>];
- 10) Expected effects of the Project implementation – this shall mean product indicators and their target values, defined in the Application Form;
- 11) Project completion – this shall mean the expected date of completion of thematic activities of the Project (the last undertaken action of the Project); e.g. the date of acceptance of works, deliveries or services;
- 12) Joint Technical Secretariat – this shall mean the institution designated on the basis of the Operational Programme South Baltic Cross-Border Co-operation Programme 2007-2013;
- 13) Partnership Agreement – this shall mean an agreement defining mutual rights and obligations of the partners as to the Project implementation;
- 14) Programme account – this shall mean the bank account on which the ERDF funds transferred for the Programme by the European Commission are collected;
- 15) Lead Beneficiary's account – this shall mean the following bank account, run in EUR:

Name and address of the Bank:

.....

Bank Code (BIC/SWIFT):.....

IBAN:.....

Name and address of the Lead Beneficiary:.....

.....

Bank account

No.....

## § 2.

### AIM OF THE SUBSIDY CONTRACT

1. The aim of this Subsidy Contract is to define the terms and conditions on which the Managing Authority transfers the subsidy from ERDF for the implementation of the Project.
2. In particular, the Subsidy Contract defines the mutual rights and obligations of the parties, concerning the Project implementation in the field of mode and terms of reimbursement, monitoring, reporting and payments, control and audit, information and publicity as well as Project management.
3. When implementing the Project, all the partners must comply with both the EU and the specific national regulations. In particular, the partners are obligated to respect the rules of fair competition and equal treatment, environmental protection provisions, public aid rules, the rule of equal status of men and women, and partnership.

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<sup>6</sup> Please enter the full name of eligibility guidelines adopted in each Member State hosting a Project partner – if any.

**§ 3.**

**PROJECT BUDGET**

1. According to the Application Form the Managing Authority, grants the Lead Beneficiary financial support for the implementation of the Project, from ERDF in the amount not exceeding:

..... EUR (say: ..... EUR),

which is ..... % <sup>7</sup> of total eligible costs amounting to ..... EUR (say: ..... EUR).

2. The Lead Beneficiary, on behalf of all partners, commits oneself to contribute (national co-financing) for the Project implementation in the amount of:

..... EUR (say: ..... EUR).

3. The total value of the Project is .....(EUR) (say:.....).

4. The co-financing rate of the funds granted referred to in item 1 results from dividing the subsidy awarded from the Programme (ERDF) by the total eligible costs of the Project. The co-financing rate may change during the implementation of the Project. It cannot however exceed 85% for the whole Project, with reservation of maximum rate 75% for Project partners from Denmark and Sweden; 85% for Project partners from Germany, Lithuania and Poland.

**§ 4.**

**PROJECT DURATION**

1. The Project implementation period is defined as follows:
- 1) starting date of the Project: .....
  - 2) date of Project completion: .....
2. With respect to the item 3 Project implementation should be performed pursuant to the Activity and financial timetable, up-to-date as of the date of conclusion of this Subsidy Contract, which constitutes the Attachment No. 5.
3. The Activity and financial timetable referred to in item 2 shall be updated together with the submission of the Progress Report on Project implementation.

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<sup>7</sup> Please state up to two decimal places. Rounding must be made pursuant to the mathematical principles, i.e. if the third decimal digit is 1,2,3,4 - the second digit is left unchanged, while if it is 5,6,7,8,9, the second decimal digit is rounded up, however no more than 85,00%.

## § 5.

### **RESPONSIBILITIES**

1. The Lead Beneficiary is responsible to the Managing Authority for the entire Project implementation. The Lead Beneficiary is also liable for all the actions undertaken by the partners, which cause a violation of the obligations resulting from this Subsidy Contract.
2. The Lead Beneficiary is solely responsible to any third parties for damages occurred with relation to the Project implementation.
3. The Lead Beneficiary relinquishes all the claims towards the Managing Authority for damages caused with relation to the Project implementation by partner or any third parties.
4. If the Managing Authority, pursuant to the present Subsidy Contract, requests the recovery of a part or the whole of subsidy granted, the Lead Beneficiary is responsible for reimbursement of the requested amount.

## § 6.

### **REPORTING AND PAYMENTS**

1. The Lead Beneficiary requests the refund of eligible expenditures on the basis of the Progress Report on Project implementation submitted to the Joint Technical Secretariat within 50 calendar days after the end of each four-month reporting period and pursuant to procedures specified in the Programme Manual.
2. The Lead Beneficiary is obliged to submit the final Progress Report to the Joint Technical Secretariat within 90 calendar days of the end of project completion, defined in § 4 item 1 point 2.
3. The Progress Reports referred to in item 1 and 2 consist of the activity part – report on Project implementation, and the financial part – request for payment together with the Lead Beneficiary's certificate of expenditures, confirming the eligibility of all the costs borne in a given period and included in the payment request.
4. The Lead Beneficiary provides the certificate of expenditures referred to in item 3, on the basis of the certificates of expenditures issued by national controllers.
5. In case the Project is to be completed within the next reporting period following the Subsidy Contract conclusion, the Lead Beneficiary shall submit only the final Progress Report to the Joint Technical Secretariat.
6. The subsidy, in form of the refund of eligible expenditures, is transferred from the Programme account to the Lead Beneficiary in Euro, in form of interim payments and final payment, on the basis of the Progress Reports referred in item 1 and 2, approved by the Managing Authority, with reservation to item 13.
7. The Managing Authority approves the payment requested and at the same time through the Joint Technical Secretariat, informs the Lead Beneficiary in writing if:
  - 1) any expenditures were considered as non-eligible, with justification;
  - 2) the approved amount subject to reimbursement was reduced by non-eligible costs, referred to in point 1, and financial corrections and revenues referred to in item 15.

8. In case errors in the Progress Report have been detected, the Joint Technical Secretariat, on the basis of separate agreement with the Managing Authority may complete or correct the errors, in case of insignificant errors, i.e. not affecting the correctness of the Progress Report, of which the Lead Beneficiary shall be informed, or address the Lead Beneficiary to correct or complete the report or provide additional explanations, within the specified time.
9. The subsidy is transferred in the amount resulting from the co-financing rate defined in § 3 item 1, with reservation of item 14 and 15.
10. The refund of subsidy from ERDF basing on the Progress Report referred to in item 2 is made in the amount of at least 5% of the total eligible costs specified in § 3 item 1, with reservation to item 11.
11. The refund of subsidy from ERDF to the Lead Beneficiary to be made on the basis of Progress Reports, referred to in item 2 could be conditioned by the on-the-spot check carried out by authorised control bodies in order to verify whether the Project was implemented pursuant to the Application Form.
12. The payments are transferred to the Lead Beneficiary bank account as soon as possible. The exchange rate risk resulting from the conversion of national currencies into Euro and of Euro to national currencies is borne by the Lead Beneficiary.
13. The payment shall be transferred to the Lead Beneficiary provided that there are funds available on the Programme account.
14. The total amount transferred to the Lead Beneficiary cannot exceed the amount of subsidy and the co-financing rate specified in § 3 item 1.
15. In case the Project generates revenue at the implementation stage, the Managing Authority shall reduce the certified amount of eligible costs by the revenue referring to eligible expenditure generated in the period concerned by the Progress Report.
16. In case Projects generate revenue after the Project completion the Lead Beneficiary shall provide in the Application Form information as to the estimated amount of the revenue that is to be generated in the way that will enable to assess the amount of the subsidy to be granted for the Project. Where it is objectively not possible to estimate the revenue in advance, the revenue generated within five years of the completion of the Project shall be deducted from the expenditure declared to the Commission.
17. If, at the latest three years after closure of the Programme, it is established that a Project has generated revenue that has not been taken into account as referred in item 16, such revenue shall be refunded to the general budget of the European Union in proportion to the contribution from the subsidy granted for the project.
18. In duly justified cases, particularly if the Programme is facing the decommitment risk resulting from the n+3/n+2 rule, the Managing Authority may address the Lead Beneficiary to submit additional Progress Report, on the terms specified by the Managing Authority.

## § 7.

### **RECOVERY OF FUNDS**

1. Should on the basis of the Progress Reports,, financial controls conducted by authorised bodies or any other sources be found that the Lead Beneficiary used the whole or a part of the subsidy granted not as intended, without adhering to the applicable procedures or Lead Beneficiary took funds in an undue manner or in excessive amounts, the Lead Beneficiary shall be obliged to reimburse these funds, respectively in part or in whole, together with interest, on terms and in the deadlines and to the account indicated by the Managing Authority.
2. The Managing Authority shall define by a decision an amount to reimburse these funds by the Lead Beneficiary and the commencement date of interest shall be borne.
3. In case the Lead Beneficiary did not perform the reimbursement when due, as referred to in item 1, the Managing Authority shall undertake actions aiming to recover the subsidy, including initiating the legal proceeding. The costs of actions aimed to recover the subsidy shall be borne by the Lead Beneficiary.
4. The interest referred to in item 1 and 2 shall be calculated as those for tax liabilities and charged from the day the subsidy transfer referred in item 1, was transferred to the Lead Beneficiary account. The rate of such interest shall be one-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.

## § 8.

### **CONTROL AND AUDIT**

1. The Lead Beneficiary is obliged to be subjected to the control and audit with reference to the Project implementation correctness which is performed by the authorised bodies.
2. The control and auditing activities shall be carried out in the Lead Beneficiary and/or its partners registered premises and/or as the on-the-spot checks.
3. The Lead Beneficiary is obliged to ensure the availability of all the documents, including electronic documents related to the Project implementation, to the authorities referred to in item 1, for the entire duration of their storage specified in § 11 item 1 point 9.

## § 9.

### **INFORMATION AND PUBLICITY**

1. Unless the Managing Authority requests otherwise, any notice or publication by the Project, including a conference or seminar, shall specify that the Project has received a subsidy from the ERDF as defined in § 3 item 1 within the framework of the South Baltic Cross-Border Co-operation Programme 2007-2013. Implementing Regulation to be carried out by the Member States concerning assistance from the ERDF must be observed.
2. Any notice or publication by the Project, in whatever form and on or by whatever medium, including the Internet, shall specify that it reflects the author's views and that the Managing Authority is not liable for any use that may be made of the information contained therein.

3. The Managing Authority shall be authorised to publish, in whatever form and on or by whatever medium, including the Internet, the following information:
  - 1) The name of the Lead Beneficiary and its partners;
  - 2) The purpose of the subsidy;
  - 3) The amount of the subsidy granted and the proportion of the total cost of the operation accounted for by the funding;
  - 4) The geographical location of the operation;
  - 5) Progress Reports including the final Progress Report;
  - 6) Whether and how the operation has previously been publicised.

## **§ 10.**

### **OWNERSHIP – USE OF RESULTS**

1. Ownership, title and industrial and intellectual property rights in the results of the Project and the Progress Reports or other documents relating to it shall, depending on the applicable national law, vest in the Lead Beneficiary and/or Partners.
2. The use of the results of the Project will be agreed by the Lead Beneficiary and the Managing Authority, on behalf of the Monitoring Committee, in order to guarantee a widespread publicity of such results and to make them available to the public.

## **§ 11.**

### **OBLIGATIONS OF THE LEAD BENEFICIARY**

1. The Lead Beneficiary shall:
  - 1) regularly monitor the progress in the Project implementation and inform the Managing Authority immediately of any existing irregularities, circumstances significantly delaying or preventing the complete implementation of the Project, or of the intention to cease the Project implementation;
  - 2) monitor the product indicators achieved during the Project implementation, pursuant to the monitoring indicators defined in the Application Form referred to in § 1 item 1 point 3;
  - 3) use the financial support funds only for eligible expenditures, for which the date of accounting event is no later than 90 calendar days from the day of date of project completion, defined in § 4 item 1 point 2 and which were paid within this period.
  - 4) spend the subsidy granted in a manner which ensures their optimum utilisation, pursuant to the best economic practice rule and guarantees fair competition between the potential sub-contractors. In particular, the Lead Beneficiary is obliged to apply the national provisions relating to the public procurement;
  - 5) prepare and timely submit documents, information and Progress Reports referred to in § 6 item 1 and 2;

- 6) correct errors and submit written explanations in the period specified by the Managing Authority, on pain of withholding of the next payment for Project eligible expenditure.
  - 7) maintain separate accounting for the Project implementation purposes, in manner ensuring the identification of each financial operation within the Project;
  - 8) disclose any revenues which occur or may occur with relation to the Project implementation and during the period of five years after the Project completion;
  - 9) keep the documentation related to the Project implementation at least until 31 December 2020. The above provision does not violate partners' obligations resulting from their national regulations;
  - 10) ensure that the public is informed about the Project being co-financed from the Fund, pursuant to requirements referred to in the Implementing Regulation and in the communication plan adopted for the Programme.
2. The Lead Beneficiary, on its own behalf and on behalf of other partners:
- 1) declares that no double financing from European Union funds occurs as far as the Project implementation is concerned.
  - 2) agrees to inform the public on the subsidy granted, in any form, by institutions involved in the Programme management.
  - 3) consents to processing of personal details, on terms specified in separate regulations, for Programme monitoring, control, promotion and evaluation purposes;
  - 4) commits to cooperate with external evaluators, operating by commission of the Managing Authority;
  - 5) declares that the information provided in the Subsidy Contract and in the attachments is true;
  - 6) declares that the Lead Beneficiary has acknowledged the applicable provisions and other documents, regulating the principles and terms of subsidy granting.
3. Should the Lead Beneficiary fail to perform its obligations resulting from this Subsidy Contract, in particular referring to the reporting and payments, control and audit as well as information and publicity, regardless on the Managing Authority's right to terminate this Subsidy Contract according to § 13, the Managing Authority may cause the withholding of payments until the Lead Beneficiary performs the obligations due.

## **§ 12.**

### **SUBSIDY CONTRACT AMENDMENTS**

1. All amendments to the Subsidy Contract require a written form on pain of nullity.
2. The Lead Beneficiary shall reimburse the subsidy granted pursuant to the order to refund it and when specified by the Managing Authority, should the project be significantly modified within 5 years from the Project completion date, as referred to in article 57 of the General Regulation.

3. The Lead Beneficiary reports in written to the Managing Authority all the changes concerning the Project implementation referred to in item 5 before they are implemented and no later than 1 month before the expected completion of the Project, subject to item 4.
4. The changes not exceeding 10% of original eligible costs of a given budget line of the Project or 20% of the original value of target product indicators included in the Application Form, may be performed individually by the Lead Beneficiary. The Lead Beneficiary shall immediately inform the Managing Authority, in writing, of the changes made.
5. The changes exceeding 10% of original eligible costs of a given budget line of the Project or 20% of the original value of target product indicators included in the Application Form may be made only upon a written consent of the Managing Authority.
6. The notification of changes referred to in item 3 requires the Lead Beneficiary to present an updated Application Form.
7. The shifts in the Project expected effects cannot lead to significant changes of the Project's objectives.
8. In case the expected effects of Project are not achieved and lead to the significant changes in Project objectives, the Managing Authority, basing on the decision of the SC is entitled to reduce the value of the subsidy granted.
9. Should the Lead Beneficiary fail to inform about a change of the bank account, it is the Lead Beneficiary who bears the consequences.

### **§ 13.**

#### **SUBSIDY CONTRACT TERMINATION**

1. The Managing Authority may terminate the present Subsidy Contract, with one-month notice, if the Lead Beneficiary:
  - 1) received subsidy from ERDF on the basis of false or incomplete declarations or documents;
  - 2) when spending funds, the Lead Beneficiary did not respect the procedures specified in the Subsidy Contract or provisions resulting from EU and national regulations, or other documents;
  - 3) used a part or the whole subsidy granted not as intended or inconsistently to the Subsidy Contract;
  - 4) is not able to finalize the Project in the planned period, in particular if the implementation of planned actions is delayed by more than 6 months compared to the Activity and financial timetable up-to-date as of the Subsidy Contract conclusion date referred to in § 4 item 2;
  - 5) did not start the Project implementation within 3 months from the starting date of the Project defined in § 4 item 1, for reasons dependent on the Lead Beneficiary;
  - 6) ceased the Project implementation or the Project is implemented inconsistently to this Subsidy Contract;

- 7) did not meet the expected Project objectives for reasons in the Lead Beneficiary's control;
  - 8) did not achieve the expected effects of the Project implementation for reasons in the Lead Beneficiary's control;
  - 9) does not submit Progress Reports pursuant to this Subsidy Contract;
  - 10) refused to be subject to control or audit by authorised bodies;
  - 11) did not remedy the stated irregularities when due;
  - 12) did not submit the requested information or documents despite a written request from the Managing Authority, in which the deadline was settled and legal consequences of failure to meet the request of the Managing Authority were defined;
  - 13) is unable to prove that the final Progress Report contains complete and true data, and that the costs reported are eligible;
  - 14) is under liquidation or bankruptcy proceeding was initiated against it, or the bankruptcy proceeding was dismissed due to insufficient assets to cover the costs of bankruptcy proceeding or when it is subject to the receivership or when it suspended its business activity or it is a subject of similar proceedings.
2. In case the Subsidy Contract is terminated for reasons referred to in item 1, the Lead Beneficiary is obligated to reimburse the subsidy granted with interests calculated pursuant to the provisions in § 7 item 4. If the Subsidy Contract is terminated for reasons specified in item 1 point 3 and 11, the Managing Authority, in duly justified cases, may decide to request the refund of only an adequate part of the subsidy granted.
  3. The present Subsidy Contract may be terminated as a result of a common will of the contracting parties or as a result of circumstances which prevent the execution of the Subsidy Contract herein. In such cases the Lead Beneficiary is entitled to the part of subsidy from ERDF which corresponds to the part of the Project executed correctly.
  4. The Subsidy Contract may be terminated upon a written request of the Lead Beneficiary, if he/she refunds the subsidy granted together with interest calculated pursuant to the provisions specified in § 7 item 4.
  5. Regardless the reason of Subsidy Contract termination, the Lead Beneficiary is obligated to submit the final Progress Report within 90 calendar days from the Subsidy Contract termination date and to archive the documentation related to its implementation for a period referred to in § 11 item 1 point 9.

#### **§ 14.**

### **FINAL REGULATIONS**

1. If any of the provisions of this Subsidy Contract turns out to be void, unenforceable or against the law other provisions stay in force, and the Subsidy Contract shall be amended in order to replace or omit the void, unenforceable or against the law provision.
2. In the scope not regulated by the present Subsidy Contract, provisions specified in the acts defined in the preamble, are being applied.

#### **§ 15.**

### **CORRESPONDENCE**

1. Any correspondence related to the Subsidy Contract execution should be prepared in English and sent to the following addresses :

Managing Authority

Ministry of Regional Development

Department of Territorial Cooperation

ul. Wspólna 2/4

00-926 Warsaw

Lead Beneficiary:

[name]

[address]

**§ 16.**

**GOVERNING LAW AND JURISDICTION**

1. The Subsidy Contract shall be governed by the Polish law and with respect to the § 14 item 2.
2. In case of a dispute, the Parties will aim to settle it by compromise.
3. In case the dispute is not resolved by amicable negotiations, it will be decided upon by the court of local jurisdiction in Poland.

**§ 17.**

**SUBSIDY CONTRACT LANGUAGE**

This Agreement is made in the English in two counterparts. Each of the Parties receives one counterpart of the Subsidy Contract in English.

**§ 18.**

**SUBSIDY CONTRACT VALIDITY**

The Subsidy Contract comes into force on the date of its signing by both Parties.

**Managing Authority**

**Lead Beneficiary**

.....

.....

*(signature)*

*(signature)*

.....  
(Place, date)

.....  
(Place, date)

Attachments:

1. Power of attorney for the person representing the Minister of Regional Development,
2. Power of attorney for the person representing the Lead Beneficiary,
3. Up-dated Application Form
4. Decision of the Steering Committee no....., date.....
5. Activity and financial timetable,
6. Progress Report on Project implementation,
7. Programme Manual – available at:  
<http://www.interreg.gov.pl/20072013/EWT/transgraniczne/baltyk>