

**Agreement No. ...
on Project preparation¹**

entered into on in Warsaw between, hereinafter referred to as the “Intermediate Body”,

represented by, on the basis of, enclosed as Annex No. 1 to this Agreement,

and

.....,

(name, surname/ company name/ place of residence, NIP, REGON)

hereinafter referred to as the “Executing Agency”

represented by, on the basis of, enclosed as Annex No. 2 to this Agreement,

hereinafter collectively referred to as the “Parties”

hereinafter referred to as the “Agreement”

Article 1

The Agreement defines the rights and obligations of the Parties connected with the preparation of the Final Project Proposal under the Project Preparation Facility for the Swiss-Polish Cooperation Programme.

Article 2

1. The Executing Agency undertakes to implement the Project with due diligence in line with the following documents:
 - 1) the Framework Agreement between the Government of the Republic of Poland and the Swiss Federal Council concerning the implementation of the Swiss-Polish Cooperation Programme to reduce economic and social disparities within the enlarged European Union of 20 December 2007 along with Annexes, hereinafter referred to as “the Framework Agreement”;
 - 2) the Agreement between Switzerland represented by the State Secretariat for Economic Affairs and the Government of the Republic of Poland represented by the Ministry of Regional Development as the National Coordination Unit on the Grant for the Project Preparation Facility to be implemented during the period 01.07.2008–14.12.2011,

¹ Model agreement only for Executing Agencies that are not State budget units within the meaning of Act of 27 august 2009 on Public Finance.

between Switzerland and the Government of the Republic of Poland of 01.07.2008 along with Annex No. 1 thereto of 27.07.2010;

- 3) the Guidelines for applicants applying for the Project Preparation Facility under the Swiss-Polish Cooperation Programme of
2. The general conditions and institutions referred to in this Agreement shall be understood in line with the provisions of the documents listed in Paragraph 1.
3. The Executing Agency declares that they are familiar with the content of the documents listed in Paragraph 1 and understands the conditions of Project implementation following therefrom.

Article 3

1. The Executing Agency shall undertake to implement the Project consisting in the preparation of the Final Project Proposal (Project No. and title)
(Project description on the basis of accepted Project Outline and decision of the donor)
2. The project implementation period is the following:
 - 1) implementation commencement: *(dd/mm/yyyy)*;
 - 2) implementation completion: *(dd/mm/yyyy)*.

Article 4

The Executing Agency shall bear sole liability towards third parties for the damage arising from Project implementation.

Article 5

1. Under this Agreement, the Intermediate Body will award the Executing Agency the grant amount expressed in PLN provided by the Swiss Party for Project implementation amounting to no more than the equivalent of CHF ..., calculated pursuant to Article 11(4), yet no more than ...% *(85% at most)* of eligible expenditure.
2. The estimated total Project budget expressed in a PLN amounts to the equivalent of CHF ..., calculated pursuant to Article 11(4).
3. The estimated total eligible expenditure under the Project expressed in a PLN amounts to the equivalent of CHF ..., calculated pursuant to Article 11(4).
4. The Executing Agency shall undertake to cover any ineligible expenditure under the Project using its own funds and to assure co-financing amounting at least to ...% of eligible expenditure.
5. The percentage of the grant referred to in Paragraph 1 will not be increased during Project implementation.
6. Increase in the total Project budget or in the total eligible expenditure above the amounts referred to in Paragraphs 2 and 3 shall not constitute the basis for increasing the amount of the grant referred to in Paragraph 1.
7. In the case of increase in the budget or eligible expenditure referred to in Paragraph 2 and 3, in particular as result of underestimation of Project budget, change in the currency

exchange rate or increase in the prices, the Executing Agency shall undertake to cover these costs using its own resources.

Article 6²

The grant shall be awarded on the following general conditions:

- 1) ...
- 2) ...
- 3) ...

Article 7

1. Eligible expenditure shall be constituted by:

- 1) expenditures for mandates to external experts to support the preparation of comprehensive Final Project Proposal fulfilling the requirements stipulated in Chapter 2, Annex No. 2 to the Framework Agreement and for the given thematic area;
- 2) expenditures for mandates to competent experts for preparing analyses/documentation e.g.: feasibility study, environmental impact assessment or any other documents deemed appropriate to complement the Final Project Proposal in order to allow a thorough appraisal of the project ;
- 3) translation cost into English of the documents referred in Subparagraph 2 into.

2. Eligible expenditure shall not be constituted by:

- 1) all kinds of mandates that lie within the function and field of competence of the Executing Agency;
- 2) all kinds of customs and taxes, required for the elaboration of the Final Project Proposal not directly linked with services;
- 3) Cost incurred before 1 July 2008 and after 14 December 2011 and beyond the Project implementation period referred to in Article 3(2);
- 4) VAT reimbursable pursuant to the provisions of law, even if it actually has not been recovered by the Executing Agency.

Article 8

The Executing Agency shall undertake in particular to:

- 1) ensure financial liquidity of the Project;
- 2) disburse the awarded funds in a manner that assures their optimal use in accordance with best economic practices and allows for full and fair competition between potential contractors;
- 3) disclose or submit any documents or information concerning Project implementation upon request by the Intermediate Body, the National Coordination Unit (NCU) or by

² If applicable, the conditions can be defined in the decision on grant award by the Swiss party or by the Intermediate Body following prior consultations with the NCU.

the Swiss Party, as well as any other institutions authorised to conduct control or audit of the Project;

- 4) store the entire documentation related to the Project implementation during its implementation for a period of 3 years from the data of completing the implementation of the Project Preparation Facility, i.e. until 14.12.2014;
- 5) immediately inform the Intermediate Body about the emerging irregularities or about the intention to discontinue the Project implementation and about any other issues that pose a serious threat for Project implementation;
- 6) draw up and submit payment claims and Project Completion Report according to *the Guidelines for applicants applying for the Project Preparation Facility under the Swiss-Polish Cooperation Programme* and pursuant to Article 10 of the Agreement;
- 7) ensure Project publicity in line with *the Guidelines on information and publicity for the Swiss-Polish Cooperation Programme*.

Article 9

1. Public procurement contract award procedures under the Project shall be conducted in line with the provisions of the national legislation and according to the provisions of Chapter 3.3 of Annex 2 to the Framework Agreement.
2. The Executing Agency shall submit to the Intermediate Body the declaration confirming compliance of the conducted public procurement contract award procedures with the provisions established in Paragraph 1 within 7 days from the date of signing the public procurement contract.
3. In order to increase transparency and to avoid corruption, tender documentation should contain an anti-corruption clause. The form of the anti-corruption clause is enclosed as Annex No. 3 to this Agreement.
4. If, in line with the national or Community legislation, the provisions of public procurement law do not apply to the agreements entered into in order to implement the this Agreement, the Executing Agency shall be obliged to disburse the awarded resources in a purposeful and cost-effective manner ensuring the rules on timely achievement of the best results from the given expenditure and the rules of fair competition and equal treatment of contractors.

Article 10

1. The funds are transferred for the Executing Agency in the form of payment as reimbursement of eligible expenditure actually incurred by the Executing Agency.
2. In order to receive the payment referred to in Paragraph 1, the Executing Agency has to draw up, on the basis of available forms, and to submit to the Intermediate Body the payment claim and Project Completion Report along with documents confirming the expenditure incurred until the 20th day of the month following the month in which the period covered by the claim referred to in Article 3(2)(2) has ended and upon approval thereof by the Intermediate Institution. The Intermediate Body shall immediately inform the Executing Agency about the approval of the respective claim. The forms of the payment claim and of the Project Completion Report shall be made available on the website of the Intermediate Body and the NCU.

3. The Executing Agency shall draw up and submit the documents referred to in Paragraph 2 in Polish in digital form and in writing.
4. The following documents shall be annexed to the payment claim by the Executing Agency:
 - 1) list of expenditure incurred under the Project in accordance with the template defined by the Intermediate Body (in digital form and in writing);
 - 2) certified true copies of bank statements confirming the invoices or other equivalent accounting documents or dated certified true copies of bank statements confirming the transfer or other accounting documents confirming the incurred expenditure (in writing) that were certified by a person authorised to represent the Executing Agency;
 - 3) certified true copies of documents confirming the acceptance of completed works and other documents confirming and justifying the correct Project implementation that were certified by a person authorised to represent the Executing Agency.
5. In the case of mistakes in the payment claim, in the Project Completion Report or in the case absence of required annexes, the Intermediate Body shall send via electronic means or in writing relevant comments to the Executing Agency, which shall submit corrected documentation, supplement the documentation or provide relevant explanations within 5 business days from the receipt of comments.
6. In case of failure of the Executing Agency to discharge the obligation referred to in Paragraph 5 within the specified deadline, the Intermediate Body shall be entitled to define another deadline for the Executing Agency to correct or supplement the documentation or to provide relevant explanations, with the proviso that after its expiry, it will be entitled to regard the expenditure that involve mistakes or deficiencies in the required documentation as ineligible. In such a case, the amount of payment indicated in the payment claim shall be reduced accordingly. The provisions of Paragraph 9 shall apply accordingly.
7. Along with the payment claim and the Project Completion Report, the Executing Agency shall submit the developed documentation referred to in Article 3(1) and the Final Project Proposal for approval to the Intermediate Body. The provisions of Paragraphs 5-6 shall apply accordingly.
8. Payments shall be made pursuant to the Act of 27 August 2009 on Public Finance.
9. The Intermediate Body shall accept the payment claim and the Project Completion Report, as well as the documentation referred to in Article 3(1), and afterwards, within 5 business days from the date of acceptance, it shall submit to Bank Gospodarstwa Krajowego (BGK) a payment order for the funds corresponding to 70% of the grant amount expressed in PLN in the payment claim accepted by the Intermediate Body.
10. The Intermediate Body shall submit to the BGK a payment order for the remaining resources within 5 working days following the receipt of the information on the exchange rate that was applied to a given payment claim by the Paying Authority during the elaboration of a reimbursement request to the Swiss Party.
11. The Intermediate Body shall inform the Executing Agency via electronic means or in writing about the transfer of resources to its bank account after obtaining relevant information from the BGK.
12. When the BGK issues the payment order for the Executing Agency, the Intermediate Body shall take into account the amount of the grant awarded by the Swiss Party.

13. The payment shall be made on condition that the resources are available on the account of the BGK. The Executing Agency shall not be entitled to claim any compensation for delays or failure to pay the grant by the BGK as a result of failure of the minister competent for public finance to transfer the funds to the proper account managed by the BGK.

Article 11

1. The Executing Agency shall be obliged to keep separate accounting records concerning the Project implementation.
2. The Executing Agency shall undertake to have a separate bank account for the resources obtained from the Swiss-Polish Cooperation Programme.
3. The resources referred to in Paragraph 2 shall be transferred by the BGK to the bank account of the Executing Agency operated in PLN under the following number in the following bank
4. The payments shall be converted from PLN into CHF according to the NBP's buying rate registered on the date of drawing up the collective reimbursement request by the Paying Authority.

Article 12

1. The Executing Agency shall undertake to undergo control and audit within the scope of correctness of Project implementation and provisions of this Agreement:
 - 1) in case of control – carried out by the NCU, the Intermediate Body, the Paying Authority, the Swiss Party or an entity authorised to act on its behalf;
 - 2) in case of audit – carried out by the Audit Institution, whose function is performed by the Minister of Finance or another authorised national institution or the Swiss Party or an entity authorised to act on its behalf.
2. Controls and audits shall be performed in the registered office of the Executing Agency or the place of Project implementation.
3. Controls and audits can be carried out during the entire Project implementation period and during a period of 3 years from the data of completing the implementation of the Project Preparation Facility, i.e. until 14.12.2014;
4. Unless otherwise stated in separate regulations, the Executing Agency shall be informed about the planned control or audit 7 days before the date of its commencement.
5. The Executing Agency shall undertake, upon the demand of the Intermediate Body or another entity authorised to control, to immediately enable full access to all the information and documents related to Project implementation.
6. In justified cases, especially upon request of the Swiss Party or in the case of suspicion of irregularity, controls and audits can be carried out on an ad hoc basis, without prior notice referred to in Paragraph 4. The provisions of Paragraph 5 shall apply accordingly.
7. The rules presented in Paragraphs 8-14 concern controls conducted by the Intermediate Body and the National Coordination Unit.
8. The controlling entity draws up a control report in writing within 15 working days following the date of control completion, which contains, *inter alia*, post-control

recommendations along with the deadline for their implementation by the Executing Agency.

9. The Executing Agency shall be allowed to present in writing its position on the report referred to in Paragraph 8 within 14 days following the date of its receipt. If no objection is raised, the Executing Agency shall be obliged to send back the signed control report within 14 days following the date of its receipt.
10. If the Executing Agency raises any objections to the content of the control report, the control team shall consider the notified objections within 14 days following the date of their receipt. If the objections are allowed, the control team submits to the Executing Agency the corrected control report within the scope of allowed objections.
11. If no further objections are raised to the control report, the Executing Agency shall be obliged to send back the signed control report within 7 days following the date of its receipt.
12. In the case of refusal to sign the corrected control report, the Executing Agency shall be obliged to send a written justification of the refusal to sign this information along with one copy of the unsigned report within 7 days following the date of its receipt. A refusal to sign the control report shall not stay the execution of post-control recommendations by the Executing Agency.
13. The institution carrying out the control shall undertake to check the implementation of the post-control recommendations defined in the control report.
14. If the Intermediate Body or another authorised entity obtains information on the suspicion of irregularities arising in Project implementation or other significant faults arising on the part of the Executing Agency, the Intermediate Body or another authorised institution shall be allowed to conduct an *ad hoc* control without prior notification.

Article 13

1. The Intermediate Body shall be allowed to suspend the payment if the Project is implemented by the Executing Agency in breach of this Agreement, in particular in the case of justified suspicion that irregularities have occurred.
2. The Intermediate Body shall suspend the payment if the Swiss Party decides to suspend of payments for the Project pursuant to the agreement referred to in Article 2(1)(2). Such a decision can be made in particular when the grant has been misused, used in breach of procedures and obligations specified in the agreements, in improper proportion or on the basis of untrue statements.
3. The Executing Agency can, at any time, submit to the Intermediate Body the documents or another evidence indicating that the conditions referred to in Paragraphs 1 or 2 are no longer applicable or fail to justify the suspension of payment when the Executing Agency applies for change of the decision on suspension of payment.
4. Payments for the Project shall be resumed by the Intermediate Body if the reasons which formed the basis for issuing the decision on suspension of payments are no longer applicable or fail to justify the suspension of payments.
5. The Intermediate Body shall resume the payment for the Project if the Swiss Party decides on resumption of the payment for the Project.
6. The Intermediate Body shall immediately inform the Executing Agency about the decision suspending or resuming the payment for the Project.

Article 14

1. If the Executing Agency funds received by the Executing Agency have been:
 - 1) misused;
 - 2) used in breach of procedures;
 - 3) collected unduly or in an excessive amount– they shall be repaid under a procedure of and pursuant to the rules provided for in Article 207 of the Act of 27 August 2009 on Public Finance.
2. In the event of termination of the Agreement referred to in Article 15, the paid resources with interest at the rate specified as for tax arrears calculated from the date of their transfer shall be repaid upon request of the Intermediate Body within the deadline and to the bank account indicated by it. In the case referred to in the first sentence, the Intermediate Body can demand repayment of the resources without interest if the termination of the Agreement occurred due to reasons not attributable to the Executing Agency.
3. If the Swiss Party decides that the grant should be repaid, pursuant to the agreement referred to in Article 2(1)(2) and after consultations with the NCU, the Intermediate Body shall be allowed to demand that the funds be repaid by the Executing Agency subject to the provisions of Paragraph 1.
4. In the case referred to in Paragraph 3, the Executing Agency shall repay the amount claimed to the Intermediate Body within 14 days following the receipt of the decision concerned to the account indicated by the Intermediate Body in line with the specifications defined in the decision on the repayment of the payment.
5. If the Intermediate Body fails to repay the funds referred to in Paragraphs 1-3 within the deadline specified by the Intermediate Body, the Intermediate Body takes measures aimed at recovering the resources due. The costs of activities aimed at grant recovery shall be charged to the Executing Agency.

Article 15

1. The Intermediate Body shall be allowed to terminate this Agreement with immediate effect in the form of a written notice if:
 - 1) The Executing Agency has failed to launch the Project implementation due to reasons attributable to it within the deadline referred to in Article 3(2)(2);
 - 2) The Executing Agency has discontinued the Project implementation or implements it in breach of this Agreement;
 - 3) The Executing Agency has refused to be controlled or audited by the authorised institutions;
 - 4) irregularities referred to in Paragraph 2 have been identified.
2. Irregularities shall be understood as violation of any provisions of documents referred to in Article 2(1) or the provisions of the European Community law or any of the provisions of Polish law related to the application for the award of a grant or Project implementation, as well as in the cases listed in Article 14(1).

Article 16

1. The Parties shall seek amicable settlement of disputes arising from the implementation of this Agreement.
2. If it is impossible to amicably settle the dispute, it will be decided in a court of law competent for the registered office of the Intermediate Body.

Article 17

1. Any correspondence related to the implementation of this Agreement shall be sent to the following addresses:

Intermediate Body:

(name)

(contact person)

(address)

(telephone)

(fax)

(e-mail)

Executing Agency:

(name)

(contact person)

(address)

(telephone)

(fax)

(e-mail)

2. The Parties shall be obliged to immediately inform each other in writing about any change in the data referred to in Paragraph 1.
3. A change of the data specified in Paragraph 1 does not constitute a change in the Agreement.

Article 18

1. This Agreement shall enter into force on the date of its signing by the last Party.
2. This Agreement has been drawn up in duplicate, one copy per each of the Parties.
3. Any amendments to this Agreement shall be deemed null and void unless made in writing in the form of an annex, except for the cases indicated in Article 17(2).
4. Any matters not provided for herein shall be governed by relevant provisions of the Polish law, including but not limited to the provisions of the Act of 27 August 2009 on Public Finance (Dz.U. of 2009, No. 157, item 1240).

Annexes to the Agreement shall constitute its integral part:

1.
2.
3. Standard anti-corruption clause.

For the Intermediate Body

For the Executing Agency

.....
[first name, last name, function]

.....
[first name, last name, function]

On

On