

GENERAL CONDITIONS
FINANCIAL AGREEMENTS UNDER THE 2013 CALL FOR PROPOSALS

MOBILITY PROJECTS IN HIGHER EDUCATION
SCHOLARSHIP AND TRAINING FUND

PROJECT SUPPORTED BY A GRANT FROM THE EEA FINANCIAL MECHANISM AND NORWEGIAN FINANCIAL MECHANISM 2009-2014 AND BY POLISH FUNDS

PART A - LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 – LIABILITY

- II.1.1 The Project Promoter shall assume sole responsibility for fulfilling all requirements in law that apply to it.
- II.1.2 The Programme Operator, National Focal Point (NFP), Financial Mechanism Office (FMO), Financial Mechanism Committee (FMC)/ Norwegian Ministry of Foreign Affairs (NMFA) shall not be liable for any damage occurring in the implementation of the measure under in this Agreement, hereinafter referred to as “the measure”. Therefore, the Programme Operator and the above mentioned institutions shall allow neither compensation claims nor any resulting cost reimbursement.
- II.1.3 The Project Promoter is obliged to repair any damage sustained by the Programme Operator, NFP, FMO and FMC/NMFA as a result of the implementation or improper implementation of the measure, unless such damage is caused by *force majeure*.
- II.1.4 The Project Promoter shall assume sole responsibility to third parties, including liability for all kinds of damage sustained or incurred by them in the course of the measure.

ARTICLE II.2 – CONFLICT OF INTEREST

- II.2.1 The Project Promoter undertakes to take all the necessary precautions to prevent the risk of conflict of interest which could affect the impartial and objective implementation of the Agreement. In particular, the said conflict of interest could occur as a result of economic interest, political or national affiliations, family or emotional reasons or any other common interests.
- II.2.2 The Programme Operator shall be notified in writing and without delay of any situation constituting or giving rise to a conflict of interest, occurring in the course of the implementation. The Project Promoter shall take all necessary steps to remedy the situation immediately.
- II.2.3 The Programme Operator reserves the right to check that the steps taken are appropriate and it may demand, if necessary, additional steps taken by the Project Promoter within a particular time limit.

ARTICLE II.3 – OWNERSHIP TITLE

- II.3.1 Unless otherwise stated in this Agreement, the ownership of the results of the measure, including industrial and intellectual property rights, as well as the right to reports and other documents linked to them, shall belong to the Project Promoter.
- II.3.2 Without prejudice to the provisions of Article II.3.1, the Project Promoter confers on the Programme Operator, NFP/, MFO, MFC and NMFA the right to use the results of the measure free of charge in any

way that they may deem appropriate, on the condition that they do not breach their obligations to keep confidentiality or that they do not breach the existing industrial and intellectual property rights.

ARTICLE II.4 – CONFIDENTIALITY

The Programme Operator and the Project Promoter undertake to maintain confidentiality of all documents, information or other materials directly linked to the subject of this Agreement, which shall be duly classified as confidential, if their disclosure could jeopardise the other Party. The Parties shall remain bound by this provision also after the measure's completion date.

ARTICLE II.5 – INFORMATION PUBLISHING

II.5.1 Unless the Programme Operator requests otherwise, all communications or publications relayed or disseminated by the Project Promoter as part of the measure, including those at conferences and seminars, shall indicate that the measure is funded by funds awarded under the Scholarship and Training Fund programme.

Any communications or publications relayed or disseminated by the Project Promoter in any form and in any means of conveying shall indicate that the publisher assumes sole responsibility and that the Programme Operator is not responsible for any case of taking advantage of the information contained therein.

II.5.2 The Project Promoter authorises the Programme Operator, NFP, FMO and FMC/NMFA to publish the following information in any form and in any means of conveying, including on the Internet:

- the Project Promoter's name and address
- subject and purpose of the co-financing
- the amount of co-financing awarded

The Project Promoter undertakes to obtain the Partner Institution's consent for the Programme Operator, NFP, FMO and FMC/NMFA to publish, on principles identical to those described above, as to the way and contents, data belonging to the institutions with which the Project Promoter has signed inter-institutional partnership agreements.

On the Project Promoter's well-founded and justified request, the Programme Operator may withdraw from publishing the above information, if its disclosure is to jeopardise the Project Promoter's safety or interest.

ARTICLE II.6 – FORCE MAJEURE

II.6.1 Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under this Agreement, is not attributable to error or negligence on their part and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to force majeure), labour disputes, strikes or financial difficulties cannot be invoked as force majeure by the defaulting party.

II.6.2 The Party facing force majeure shall immediately notify of it the other Party by registered mail with delivery confirmation or in an equivalent way, describing the nature of the event and its probable duration as well as the possible consequences.

II.6.3 Neither Party shall be held liable for breaching their obligations under this Agreement, if their discharge has been rendered impossible by force majeure. The Parties shall use their best efforts to minimise damage inflicted by force majeure.

ARTICLE II.7 –CONCLUDING CONTRACTS WITH SUBCONTRACTORS AND AWARDING PUBLIC PROCUREMENT CONTRACTS

- II.7.1** If the implementation of the measure under the Agreement with the Programme Operator requires the Project Promoter to conclude contracts with subcontractors, which generate measure costs constituting the eligible costs of the co-financing, the Project Promoter, when choosing an offer, shall be guided by the value for money principle, while respecting the principle of competition, transparency and equal treatment of potential subcontractors, in order to avoid any conflict of interest of parties participating in the selection process of the best offer and, when applicable, shall be guided by the Act adopted on 29 January 2004 – Public Procurement Law (consolidated text of 2010, O.J. Nr.113, item 759, as amended).
- II.7.2** The justification for concluding a contract under Article II.7.1 must take into consideration the nature of the measure and the things that are indispensable for its implementation.

The Project Promoter shall be solely responsible for the implementation of the measure and its compliance with the provisions of the Agreement with the Programme Operator. The Project Promoter is obliged to include indispensable provisions as part of contracts with subcontractors to ensure that they will waive all the rights resulting from signing the contracts in relation to NFP, FMO and FMC/NMFA as well as the Programme Operator as far as the execution of the Agreement between the Project Promoter and Programme Operator is concerned.

- II.7.3** The Project Promoter is obliged to include indispensable provisions as part of contracts with subcontractors to ensure that the General Conditions applicable to this Agreement with the Programme Operator are also applicable to the contracts concluded with the subcontractors.

ARTICLE II.8 – TRANSFER OF RIGHTS

Any and all claims resulting from this Agreement that the Project Promoter might have against the Programme Operator, cannot be transferred onto third parties.

ARTICLE II.9 – TERMINATION OF THE AGREEMENT

II.9.1 Termination by the Project Promoter

In duly justified cases, the Project Promoter may withdraw its application for a co-financing and terminate the Agreement at any time by giving 30 days' written notice stating the reasons, without being required to furnish any indemnity on this account. If no reasons are given or if the Programme Operator does not accept the reasons, the Project Promoter shall be deemed to have terminated this Agreement improperly, with the consequences set out in Article II.9.4.3.

II.9.2 Termination by the Programme Operator

The Programme Operator may decide to terminate the Agreement, without the Project Promoter's being entitled to an indemnity, if at least one of the following circumstances occurs:

- a) in the event of a legal, financial, technical, organisational or ownership change in the Project Promoter's situation, liable to affect the Agreement in a substantial way or to call into question the decision to award the co-financing;
- b) if the Project Promoter fails to fulfil a substantial obligation incumbent on it under the terms of the Agreement, including its Annexes;
- c) in the event of force majeure, information of which has been passed in accordance with Article II.6;
- d) if the Project Promoter is declared bankrupt, is being wound up or is the subject of bankruptcy proceedings open to arrangements or will be subject to any other proceedings of a similar nature;

- e) if the Programme Operator has evidence or has a good reason to suspect that the Project Promoter or an *entity or person related* to him is guilty of grave professional misconduct;
- f) if the Project Promoter does not meet its obligation related to payment of social insurance contributions or taxes;
- g) if the Programme Operator has evidence or has a good reason to suspect that the Project Promoter or an *entity or person related* to him has connections with a criminal organization or has a good reason to suspect other illegal dealings detrimental to the financial interest of the EEA Financial Mechanism, Norwegian Financial Mechanism and the budget of the Republic of Poland;
- h) if the Programme Operator has evidence or has a reason to suspect that the Project Promoter or an *entity or person related* to him has committed a grave error or substantial irregularities or fraud in the procedure of awarding or spending the co-financing;
- i) if the Project Promoter is guilty of misrepresentation or submits reports inconsistent with reality to obtain the co-financing provided for in the Agreement;
- j) if the Programme Operator has evidence that the Project Promoter has committed systemic or repetitive errors, irregularities, fraud or breaches of obligations under other agreements financed by the EEA Financial Mechanism and the Norwegian Financial Mechanism, European Union or the European Atomic Energy Community whose co-financing has been awarded on similar conditions as the ones under the Agreement and the above mentioned errors, irregularities, fraud or breaches of obligations would substantially affect the co-financing awarded under this Agreement.

Persons authorized to represent the Project Promoter, make decisions on its behalf or inspect it are to be understood as other *related persons* as specified in points e), g) and h). In particular, any entity meeting the requirements of Article 1 of the Seventh Council Directive No. 83/349/EEC of 13 June 1983 shall be understood as other *related entities*.

II.9.3 Agreement Termination Procedure

The termination of the Agreement shall take effect at the end of the notice period, indicated in a written notification of the Programme Operator's decision on the case, by way of a registered letter with delivery confirmation or in an equivalent way, whereas the date of its receipt by the Project Promoter is decisive.

In the cases described in points (a), (b), (d), (e), (g) and (h) of Article II.9.2 the Project Promoter has 15 calendar days to present its position on the case and to take any necessary steps to guarantee the continuity of the execution of its duties under the Agreement. If the Programme Operator does not accept the Project Promoter's position within 15 calendar days of its receipt, the procedure shall be continued.

In the cases described in points (c), (f), (i) and (j) of Article II.9.2 the termination of the Agreement shall take effect without giving notice, that is on the day following the date on which the Project Promoter receives the Programme Operator's notice of termination of the Agreement.

II.9.4 Agreement Termination Consequences

II.9.4.1 In the event of termination of the Agreement, payments by the Programme Operator shall be limited to eligible costs actually incurred by the Project Promoter up to the date when termination takes effect, in accordance with Article II.14. The Project Promoter shall have 10 working days of the date of Agreement termination, as notified by the Programme Operator, to present its Completion Report accompanied by a final payment claim in accordance with Article II.12.2. If the Completion Report is not submitted within this time limit, the Programme Operator shall not reimburse the expenditure incurred by the Project Promoter up to the date of termination and it shall recover any advance payments released.

II.9.4.2 By way of exception, at the end of the notice period referred to in paragraph II.9.3, where the Programme Operator terminates the Agreement on the grounds that the Project Promoter has failed to produce the Completion Report within the deadline stipulated in the Special Conditions, and the Project Promoter does not fulfil this requirement within the time limit given in a written reminder sent by

registered mail or in an equivalent way, the Programme Operator shall not pay the remaining amount and shall recover any advance payments.

II.9.4.3 In the event of improper termination by the Project Promoter or termination by the Programme Operator on the grounds set out in Article II.9.2, points (a), (e), (g), (h), (i) or (j), the Programme Operator may require the partial or total repayment of sums already paid under the Agreement in proportion to the gravity of the failings that have caused the termination.

ARTICLE II.10 – CONTRACTUAL PENALTIES

II.10.1 The Programme Operator may decide to impose a financial penalty consisting in cancelling the whole co-financing under this Agreement or in cancelling a part thereof in the cases described in Article II.13.1 and in Art. 207 of the Act on Public Finance.

II.10.2 The Project Promoter shall be immediately informed about the decision to impose a financial penalty, however, not later than 5 working days of making the decision. The reasons of the decision shall be given in the notification.

II.10.3 In the case of making a decision described in Article II.10.1 or II.10.2 the Project Promoter shall repay the Programme Operator the amount demanded, in the way, within the time limit and on the principles indicated in Art. 207 of the Act on Public Finances.

II.10.4 If the amount demanded exceeds the amount remaining to be paid in subsequent instalments or when no deductions are possible and the Project Promoter has failed to make the repayment as described in Article II.10.3 within the time limit, the Programme Operator shall take steps to recover the amount due, using all available legal remedies and in particular the security interest described in Article II.12.1. The costs of recovering the amount shall be paid by the Project Promoter.

ARTICLE II.11 – ANNEXES TO THE AGREEMENT

II.11.1 On pain of nullity any amendment to the terms and conditions of this Agreement must be concluded in writing in the form of an Annex.

II.11.2 Any amendment to the terms and conditions of the Agreement may not be intended to or result in such modifications of the contents of the Agreement which would be contrary to the principles, conditions and purposes of awarding the co-financing to the Project Promoter or which might cause unequal treatment of applicants.

II.11.3 Should the Project Promoter make an application to amend the conditions of the Agreement, it will be obliged to send a *Card of changes* to the Programme Operator not later than 90 calendar days prior to the end of the project, containing a description of the changes proposed and their impact on the substantive content of the project, with the exception of cases duly justified by the Project Promoter and accepted by the Programme Operator. Amendments to the terms and conditions of the Agreement require the Programme Operator's written consent for the change proposed.

PART B - FINANCIAL PROVISIONS

ARTICLE II.12 – PAYMENT CLAIMS

Payments shall be effected in accordance with the payment conditions set out in the Special Conditions.

II.12.1 Advance Payments

Advance payments are intended to enable the Project Promoter to commence the project.

If a co-financing is in excess of EUR 25,000, the Programme Operator may demand an appropriate security interest guaranteeing proper performance of the Agreement. The Project Promoter shall provide the Programme Operator with a bank guarantee or a guarantee of another institution authorised to issue such guarantees, or with its own blank promissory note (security). To secure funds the Programme Operator can also set an individual schedule of payments. Should the Project Promoter fail to satisfy the whole or a part of conditions imposed by this Agreement, the Programme Operator shall have the right to take steps aimed at enforcing the security.

II.12.2 Balance Payment

The balance payment shall be effected by the Programme Operator on the basis of the actual implementation of the project under this Agreement, after its completion. The above payment may be in the form of requesting the Project Promoter to repay the amount due to the Programme Operator, if the amount of the advance payments released exceeds the final co-financing amount described in Article II.14.

Within the time limit specified in the Special Conditions the Project Promoter shall submit the Completion Report accompanied by a request for a balance payment.

As of receiving the Completion Report, the Programme Operator shall be bound by time limits set out in the Special Conditions, including time limits for:

- approving or rejecting the Completion Report covering the project;
- demanding that the Project Promoter submits additional documents or/and explanations deemed necessary for approving the Completion Report.

Requests for additional documents or/and information, including the re-submission of the Completion Report, if rejected, shall be communicated to the Project Promoter in writing. The Project Promoter shall be given the time limit set out in the Special Conditions to submit the documents or/and explanations.

ARTICLE II.13 – GENERAL PROVISIONS RELATING TO PAYMENTS

II.13.1 Payments shall be effected in PLN by the Programme Operator. The payment date is the date of submitting a payment order to Bank Gospodarstwa Krajowego.

II.13.2 The Programme Operator may suspend advance payments, interim payments or balance payments made to the Project Promoter at any time of the execution of the Agreement, if:

- a) the Programme Operator has evidence that the Project Promoter has committed grave errors, irregularities and fraud in the selection and recruitment procedure or in the course of the Agreement execution, or when the Project Promoter has not met the requirements of the Agreement;
- b) the Programme Operator has evidence that the Project Promoter has committed systemic or repetitive errors, irregularities, fraud or breaches of obligations under other agreements financed by the EEA Financial Mechanism and the Norwegian Financial Mechanism, European Union or the European Atomic Energy Community whose co-financing is awarded on similar conditions as the ones under this Agreement and the above mentioned errors, irregularities, fraud or breaches of obligations would substantially affect the co-financing awarded under this Agreement;
- c) the Programme Operator has a reason to suspect the Project Promoter of committing grave errors, irregularities, fraud and of breaching its obligations in the course of awarding the co-financing or in the course of the implementation of the measure and when the Programme Operator is compelled to verify their actual existence.

Before suspending payments the Programme Operator shall inform the Project Promoter in writing about the decision to suspend payments, giving reasons for it and in the cases described in the above points (a) and (b) it shall present the conditions of payment resumption. The Project Promoter shall be requested to present its position on the case within 10 working days of receipt of the above notification.

Having taken note of the Project Promoter's position on the issue of payment suspension, the Programme Operator may decide to stop the suspension and notify the Project Promoter of it in writing.

If the Project Promoter fails to present its position on the issue of payment suspension or if despite presenting that position the Programme Operator decides to continue the suspension, it may do it by sending a notification with reasons for the continuation and in cases relating to the above points (a) and (b) it shall indicate conditions for payment resumption or in case (c) the Programme Operator shall indicate the time limit for making final arrangements.

The suspension of payment takes effect on the date when the Programme Operator sends the notification to the Project Promoter.

To resume payment, the Project Promoter shall fulfil without delay, however, not later than within 10 working days, the requirements specified in the notification and deliver updates on its progress.

Having made sure that the Project Promoter has fulfilled the requirements for payment resumption and having performed an on-the-spot check, the Programme Operator shall without delay, however, not later than within 10 working days, notify the Project Promoter of the fact in writing.

Under Articles II.9.1 and II.9.2 the Project Promoter shall not be obliged to lodge a payment claim and additional documents within the period of payment suspension, without prejudice to its or the Programme Operator's right to terminate the Agreement.

Such a claim and additional documents can be submitted as soon as possible after payment resumption and they can be included in the first payment claim, as a consequence of payment resumption and in accordance with the time limits set out in Article I.5.

II.13.3 The Project Promoter shall inform the Programme Operator about the total amount of interest or equivalent benefits resulting from the advance payments received from the Programme Operator. Information about the amount of generated interest in the Project Promoter's bank account shall be given in the Completion Report. The Programme Operator shall issue a request for such interest to be repaid in accordance with the provisions of Article II.15.

ARTICLE II.14 – DETERMINATION OF THE BALANCE PAYMENT AMOUNT

II.14.1 Taking into consideration Article II.16 the Programme Operator shall determine the amount of the balance payment to be made to the Project Promoter, on the basis of documents described in Article II.12.2 and accepted by the Programme Operator.

II.14.2 Under no circumstances may the amount paid to the Project Promoter by the Programme Operator exceed the maximum total co-financing amount as set out in the Special Conditions.

Lump sums are limited to the amounts specified in the Special Conditions. The co-financing amount based on the scale of unit costs shall be determined through the application of provisions contained in the Special Conditions, on the basis of the actual implementation of the project and caps set out in the Special Conditions.

If the requirements set out in the Special Conditions are not fulfilled at all or they are partly fulfilled at the time of the project completion, the Programme Operator shall withdraw or reduce its contribution in accordance with the actual degree to which the requirements or conditions have been fulfilled.

II.14.3 If the project has not been implemented or only part of it has been implemented, including failure to achieve the intended objectives and breaching the provisions of the Agreement, under the conditions

and provisions of this Agreement the Programme Operator may reduce the co-financing amount awarded to reflect the actual degree of implementation.

- II.14.4** On the basis of the final co-financing amount thus determined and taking into consideration all the advance payments effected, the Programme Operator shall determine the amount of the balance payment. Should the total amount of advance payments exceed the final co-financing amount calculated on the basis of the Completion Report, the Programme Operator shall demand that the excess amount be repaid.

ARTICLE II.15 – REPAYMENT OF FUNDS

- II.15.1** If – in accordance with this Agreement – the Programme Operator sets an amount to be repaid, the Project Promoter shall be obliged to repay the amount as set by the Programme Operator.

Prior to recovering the amount due, the Programme Operator shall notify the Project Promoter in writing of the decision made, giving its reasons and information about appealing against that decision, within the time limit set out in the Special Conditions.

If the Project Promoter fails to present its position on the issue of repayment or if despite presenting its position the Programme Operator decides to continue the debt recovery, it may do it by sending an appropriate debit note containing the conditions and due date of payment.

- II.15.2** Should the Project Promoter fail to repay the amount within the time limit specified by the Programme Operator, interest shall be charged for late payment in accordance with the rate quoted in the Civil Code. Late payment interest shall cover the period from the date of payment excluding that date, to the date when the Programme Operator receives the full amount due, excluding that date.
- II.15.3** Each partial payment shall first go towards covering charges and interest linked to late payment and then towards covering the principal.
- II.15.4** If payment is not effected within the time limit, amounts due to the Programme Operator may be subject to repayment by way of setting off any amounts due to the Project Promoter who shall be duly informed about it in a letter sent by registered mail with delivery confirmation or in an equivalent way, or by way of calling upon the financial guarantee provided under Article II.12.1. In exceptional circumstances justified by the necessity to protect the financial interest of the EEA Financial Mechanism and of the Norwegian Financial Mechanism, the Programme Operator may recover the amounts due by way of a set-off prior to the payment date. No prior consent of the Project Promoter's is required.
- II.15.5** Bank charges relating to the repayment of the amounts due to the Programme Operator shall be borne solely by the Project Promoter.
- II.15.6** The Project Promoter understands that failure to repay an amount may result in the Programme Operator's taking legal action against it in accordance with national laws.

ARTICLE II.16 – AUDITS, CHECKS, MONITORING AND EVALUATION

- II.16.1** In the scope and for the purposes of checks and audits performed by the Programme Operator, NFP, FMO, FMC/ NMFA, EFTA Committee of Auditors and the Bureau of Norwegian General Auditor or a body authorised to act on their behalf, on the request of the Programme Operator, NFP, FMO, FMC/NMFA or other body authorised to perform checks or audits, the Project Promoter undertakes to provide immediate, full and unimpeded access to any and all documents and information, including those in electronic form, concerning the implementation of the project, its results and the use made of the co-financing.

- II.16.2** Checks and audits are performed at the Project Promoter's seat or in the places where the project is implemented.
- II.16.3** Checks and audits can be performed throughout the whole period of project implementation or after its completion, until 31 December 2020.
- II.16.4** For the duration of checks and audits the Project Promoter shall ensure the presence of persons competent to give information and explanations of issues linked to the project implementation.
- II.16.5** Throughout the period till 31 December 2020 and at the disposal of the Programme Operator, NFP, FMO and FMC/NMFA the Project Promoter shall keep any original copies of documents relating to this Agreement, in particular ledgers, tax records or, in exceptional and duly justified cases, certified copies of original documents relating to the Agreement, in any appropriate means of conveying which ensures their integrity, in accordance with the applicable national laws.
- II.16.6** The Project Promoter acknowledges that the Programme Operator, NFP, FMO or FMC/NMFA may instruct their own staff or any other external body authorised to perform such actions on their behalf, to perform an audit of the use made of the co-financing. Such audits can be performed in the course of the execution of this Agreement and after the completion of the project, until 31 December 2020. In appropriate cases audit findings may lead to the Programme Operator's making a decision to recover the amounts paid.
- II.16.7** Should the audit show that an activity subject to lump sum clearing has not taken place, but the Project Promoter has received the resulting amounts, the Programme Operator shall have the right to demand repayment of those amounts.
- II.16.8** The Project Promoter undertakes to allow the Programme Operator's staff, NFP, FMO or FMC/NMFA and external staff authorised by the Programme Operator, NFP, FMO or FMC/NMFA, the appropriate right to access to sites and premises where the action shall be carried out and to all information required for the purposes of performing such audits.
- II.16.9** In each case when the Programme Operator, NFP, FMO, FMC/NMFA or any authorised external body shall perform an interim or final evaluation of the measure against the programme objectives, the Project Promoter undertakes to make available to the authorised persons all documents and information facilitating a successful evaluation and to allow them the right to access set out in Article II.16.