PROJECT CONTRACT

**No.:** …...............................................................................................................................................

Project Grant Agreement: *[Project title]* ……………………………….  
selected under ….…………………........………………….., hereinafter referred to as “the Agreement”[[1]](#footnote-2),concluded in Warsaw on …............................. by and between:

The National Centre for Research and Development, ul. Nowogrodzka 47a, 00-695 Warsaw, hereinafter referred to as the “Centre”,

represented by:

……………………………………………….......................................................................................................

pursuant to authorisation No. ..................................... dated ...............................................

and

1) ……………..[[2]](#footnote-3), represented by ….., which was established on the basis of ……, a copy of which is provided as an Appendix to this Agreement, hereinafter referred to as “the Project Promoter”,

hereinafter referred to as “the **Parties**.”

Acting pursuant to:

1. the Act of 30 April 2010 on the National Centre for Research and Development, hereinafter referred to as “the Act”;
2. Article 365 (11) of the Act of 20 July 2018 Law on Higher Education and Science;
3. the Act of 27 August 2009 on Public Finance, hereinafter referred to as “APF”;
4. Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the common market in application of Articles 107 and 108 of the Treaty, hereinafter referred to as “Regulation 651/2014”;
5. Commission Regulation (EU) No. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, hereinafter referred to as “Regulation 1407/2013”;
6. the Act of 29 January 2004 Public Procurement Law, hereinafter referred to as “PPL”;
7. the Regulation of the Ministry of Science and Higher Education of 19 August 2020 on granting state aid through the National Centre for Research and Development, hereinafter referred to as the “MSHE Regulation”[[3]](#footnote-4);
8. the Regulation on the implementation of Norway Grants 2014-2021, hereinafter referred to as the “Regulation” available on the website: www.eog.gov.pl.
9. Guideline for Research Programmes – Rules for the establishment and implementation of programmes falling under the Programme Area “Research” (EEA Financial Mechanism and Norwegian Financial Mechanism 2014 – 2021), hereinafter referred to as the “Guidelines”, available on the website www.eog.gov.pl.

The Parties hereby agree as follows:

# § 1. Definitions

Whenever this Agreement refers to:

1. **fundamental research** – it shall mean research as provided for in Article 2 (84) of Regulation 651/2014;
2. **industrial research** – it shall mean research as provided for in Article 2 (85) of Regulation 651/2014;
3. **beneficiary** – it shall mean the Project contractor, as provided for in Article 41 (1) of the Act;
4. **funding** – it shall mean the amount of financial resources granted to the Project Promoter from public resources pursuant to the Agreement;
5. **research unit** – it shall mean an entity as provided for in Article 7 (1) (1)-(2) and (4)-(8) of the Act – Law on Higher Education and Science, being an organisation conducting research and disseminating knowledge, specified in Article 2 (83) of Regulation 651/2014, provided that it must not be an entity the sole purpose of which is to widely disseminate the results of R&D work by education, publications or knowledge transfer.
6. **copies** – it shall mean the copies of documents every page of which has been certified true by a person authorised to represent the Project Promoter, unless the Agreement provides otherwise;
7. **eligible costs** – it shall mean eligible costs in accordance with the rules described in the *Cost Eligibility Guide*, which is part of the competition documents, constituting a catalogue of the eligible costs that may be incurred;
8. **SME** – it shall mean micro, small and medium enterprises within the meaning of Article 2 of Appendix I to Regulation 651/2014;
9. **pre-commercialisation activities** – it shall mean preparatory actions for the implementation of industrial research and **experimental development** in economic activities, which facilitate making the solution being the subject of the Project reach the stage at which it can be commercialised (in particular preparing implementation documentation, patent agent services, tests, certification, market research);
10. **experimental development** – it shall mean experimental development as provided for in Article 2 (86) of Regulation 651/2014;
11. **Project**– it shall mean the undertaking as provided for in Article 2 (1) of the Act implemented by the Project Promoter pursuant to the Agreement, involving the carrying out of fundamental research, industrial research and **experimental development**, or **experimental development**; the Project may also cover a feasibility study or pre-commercialisation activities;
12. **enterprise** – it shall mean an enterprise within the meaning of Article 1 of Annex I to Regulation 651/2014;
13. **scientific risk** – it shall mean the probability of not achieving the assumptions or objectives of the Project despite the actions of the Project Promoter being in accordance with the law, the Agreement, the applicable procedures and good practices, as well as due diligence, caused by circumstances that could not be foreseen at the stage of applying for funding;
14. **force majeure** – it shall mean an event or combination of events beyond the control of the Parties which make it impossible to perform the obligations arising from the Agreement, which the Parties could not foresee, prevent or overcome by exercising due diligence;
15. **flat-rate** – shall mean a simplified method of settling costs constituting a specific percentage of one or several cost categories
16. **feasibility study** – it shall mean a feasibility study as provided for in Article 2 (87) of Regulation 651/2014
17. **public resources** – it shall mean the resources as provided for in Article 5 (1) (1) and (2) of the APF;
18. **own contribution of the Project Promoter** – it shall mean funds secured by the Project Promoter which shall be assigned to cover the eligible costs and which shall not be provided to the Project Promoter in the form of funding (difference between the amount of eligible costs and the amount of funding provided to the Project Promoter); own contribution of the Project Promoter must not be from public resources, including grants/subsidies from the state budget and the budgets of local government units, unless the procedure of granting the said grant/subsidy does not exclude assigning the granted funds to cover own contribution in other projects[[4]](#footnote-5);
19. **project proposal** – it shall mean the application submitted by the Project Promoter to obtain funding, which constitutes Appendix No. 5 to the Agreement;
20. **payment request** – it shall mean the document submitted by the Project Promoter prepared according to the template specified by the Centre, which is used, i.a., to apply for the provision of advance payment, settlement of advance payment, application for the disbursement of funding (including as a refund).

# § 2. Subject matter

1. The Agreement sets out the rules according to which the Centre provides funding for Project implementation and the rights and responsibilities of the Parties connected with Project implementation.
2. Funding for a feasibility study, fundamental research, industrial research and experimental development constituting state aid, is granted on the basis of the MSHE Regulation and shall constitute state aid exempted from the notification requirement provided for in Article 108 of the Treaty on the Functioning of the European Union pursuant to Regulation 651/2014.
3. The funding of pre-commercialisation activities includes:
4. de minimis aid for an enterprise, which involves supporting the commercialisation of scientific research and experimental development results as well as other forms of transfer to the economy, provided on the basis of the MSHE Regulation and exempted from the notification requirement provided for in Article 108 of the Treaty on the Functioning of the European Union pursuant to Regulation 1407/2013 (hereinafter: „*de minimis* aid”);

# § 3. The rights and responsibilities of the Parties

1. The Centre shall grant the Project Promoter funding for Project implementation, in the amount specified in § 6 (3) of the Agreement.
2. Declaring a Project eligible for funding is not equivalent to declaring all costs incurred during its implementation eligible.
3. The Project Promoter shall implement the Project with due diligence and use the funding in accordance with:
4. the Agreement and its appendices, in particular with the description contained in the project proposal;
5. the applicable national and EU regulations, including regulations on competition, public procurement and state aid.
6. The legal framework of Norway Grants 2014-2021, which is provided for in Article 1.5 of the Regulation.
7. The Project Promoter shall, in particular:
8. achieve the objectives and indicators specified in the project proposal and implement the full material scope of the Project in accordance with the project proposal;
9. not transfer to another entity, within the cost eligibility period provided for in § 7 (1) of the Agreement and within 5 years from completing the Project implementation, the rights, responsibilities and liabilities arising from the Agreement, without the Centre’s consent expressed in writing under pain of nullity;
10. submit payment requests and Reports to the Centre within the specified time limits;
11. immediately notify the Centre of the intention to carry out such legal and organisational changes in its status that might directly affect the implementation of the Project and obtain the Centre’s consent to introduce planned legal and organisational changes in its status;
12. provide the declared own contribution to the implementation of the Project[[5]](#footnote-6);
13. provide all requested information or documents regarding Project implementation and funding allocation, as well as Project results and their use, to the Centre and the entities authorised by the Centre during Project implementation and for a period of 5 years from completing Project implementation.
14. The Project Promoter agrees to provide all information on Project implementation, including the project proposal, its review, the Agreement, Reports and other documents regarding the Project being implemented to public administration bodies or entities authorised by them, for purposes connected with the activities of those bodies or entities.

# § 4. Intellectual property rights and implementation of the Project results

1. The authors’ rights to the results of fundamental research, industrial research and experimental development constituting the Project result are vested in the Project Promoter. Agreements concluded with subcontractors shall not break the rule specified in the previous sentence.

# The following forms of implementing the results of industrial research and experimental development, or experimental development, implemented under the Project are possible:

# introducing the results of industrial research or experimental development (if the Project only assumes the latter) in own economic activities of the Project Promoter being an enterprise, by starting production or provision of services on the basis of the obtained Project results, or

# granting the licence to exercising the Project Promoter’s right to the results of industrial research and experimental development, or experimental development, in the economic activities conducted by another enterprise, or

# selling the rights to the results of industrial research and experimental development, or experimental development, in order to introduce them in the economic activities of a different enterprise.

# The disposal of rights to the results of industrial research and experimental development, or experimental development for the purposes of their further resale is not considered the implementation of results of industrial research and experimental development, or experimental development [[6]](#footnote-7).

# The sale of rights to the results of industrial research and experimental development, or experimental development, or granting a licence to the exercise of the rights vested in the Project Promoter to the results of industrial research and experimental development, or experimental development in economic activities conducted by a different enterprise, which are provided for in (2) (2) and (3) should be made according to market prices[[7]](#footnote-8).

# The contract for the sale of rights to the results of industrial research and experimental development, or experimental development, or granting the licence to exercise these rights to the results shall, in particular:

# guarantee the selling price of rights to the results of industrial research and experimental development or granting licence to exercise the rights vested in the Project Promoter to these results at the market level;

# oblige the purchaser/licensee to implement the results of industrial research and experimental development in their own activities by launching production or provision of services on the basis of Project results;

# prohibit the disposal of rights to the results of industrial research and experimental development to a third party (for a sale contract)[[8]](#footnote-9);

# define the date by which the results of industrial research and experimental development must be introduced into the economic activities of the purchaser/licensee;

# oblige the purchaser/licensee to submit a declaration on introducing the results of industrial research and experimental development into its economic activities at the latest within a year from the date of concluding the contract for the sale of rights to the results of such research and work/contract granting the licence to exercise the rights to the results vested in the Project Promoter, or within a year from completing Project implementation at the latest in a situation where the contract for the sale of rights to the results of industrial research and experimental development /contracts granting licences to use the rights to the results vested in the Project Promoter was concluded as part of Project implementation.

# The Project Promoter may start implementing the results of industrial research and experimental development before the Project implementation is completed. A Project Promoter being a research unit shall not be entitled to implementation within the meaning of (2) (1).

**§ 5.**

**Conditions for granting the premium [[9]](#footnote-10)**

* + - 1. With regard to aid as provided for in § 2 (2) of the Agreement, the Project Promoter being an enterprise obtains the right to a premium for the wide dissemination of the results of industrial research or experimental development, which is 15 percentage points, whereas:
         1. for industrial research, obtaining the premium must not result in exceeding the intensity of 80% of the eligible costs for micro and small enterprises, 75% of the eligible costs for medium-sized enterprises, 65% of the eligible costs for other enterprises than SME,
         2. for experimental development, obtaining the premium must not result in exceeding the intensity of 60% of the eligible costs for micro and small enterprises, 50% of the eligible costs for medium-sized enterprises, 40% of the eligible costs for other enterprises than SME,

If, within a period of 3 years from completing the implementation of the Project, the results obtained by the Project Promoter are:

* 1. presented during at least 3 scientific and technical conferences, including at least one at the national level, or
  2. published in at least two scientific or technical journals from the list of journals prepared by the Ministry of Science and Higher Education (in part A of the list of journals) or in databases providing free access to the obtained Project results (raw research data), or
  3. fully distributed using free software or open access software.

1. In the case provided for in (1) (3), the Project Promoter shall make available and widely disseminate the results of industrial research or experimental development to all entities interested in using these results free of charge while maintaining the equal access rule. Making software available in an incomplete version, not having all the functional features attributed to the results of industrial research and experimental development does not constitute wide dissemination.
2. Failure to meet the conditions provided for in (1) results in reducing the aid intensity to the basic level.
3. The Project Promoter being an enterprise obtains the right to premium for the effective cooperation within the Project with another, unrelated (within the meaning of Appendix I to Regulation 651/2014) enterprise or enterprises making up the Consortium, which is 15 percentage points, whereas:
   1. for industrial research – obtaining the premium must not result in exceeding the intensity of 80% of the eligible costs for micro and small enterprises, 75% of the eligible costs for medium-sized enterprises, 65% of the eligible costs for other enterprises than SME,
   2. for experimental development– obtaining the premium must not result in exceeding the intensity of 60% of the eligible costs for micro and small enterprises, 50% of the eligible costs for medium-sized enterprises, 40% of the eligible costs for other enterprises than SME,

if:

1. no enterprise bears more than 70% of the eligible costs as part of the jointly implemented industrial research or experimental development, and
2. the implementation of industrial research or experimental development involves cooperation with at least one SME,
3. The Project Promoter being an enterprise obtains the right to a premium of 15 percentage points for effective cooperation under the Project implemented within the Consortium with at least one research unit.
   1. for industrial research – obtaining the premium must not result in exceeding the intensity of 80% of the eligible costs for micro and small enterprises, 75% for medium-sized enterprises, 65% for other enterprises than SME,
   2. for experimental development – obtaining the premium must not result in exceeding the intensity of 60% of the eligible costs for micro and small enterprises, 50% for medium-sized enterprises, 40% for other enterprises than SME,

if the research unit:

1. bears more than 10 % of the eligible costs as part of the jointly implemented industrial research or experimental development, and
2. has the right to publish own research results.
3. Subcontracting is not considered effective cooperation.
4. Failure to meet the conditions provided for in (4) (1)-(2) or in (5) (1)-(2) results in reducing the aid intensity to the basic level.
5. The right to obtain a premium for effective cooperation under the Project is applicable only to the extent to which it exists as at the day of concluding the Agreement. Cooperation having the features of effective cooperation, as provided for in (4) or (5), taken up during Project implementation, is not an entitlement to obtain the premium.
6. The Project Promoter being an enterprise loses the right to a premium as provided for in (4) or (5) if the Consortium Agreement is terminated during Project implementation or amendment to the Consortium Agreement which prevents the conditions for granting the premium from being met. In the case mentioned in the preceding sentence, the aid intensity is reduced to the basic level.
7. It is not possible to combine premiums for wide dissemination and premiums for effective cooperation under the Project. Obtaining one premium makes it impossible to obtain another.

# § 6. Project and funding value

1. The total cost of Project implementation is PLN ………………. (say: ……………. zloty).
2. The total amount of eligible costs is PLN ………………. (say: ......................................................... zloty), whereas:
3. the maximum amount of eligible costs to be covered by the aid for preparing a feasibility study PLN ……………………….. (say: ……………. zloty).
4. The maximum amount of eligible costs to be covered by the aid for fundamental research, industrial research and experimental development is: PLN ........................ (say: ……………. zloty).
5. the maximum amount of eligible costs to be covered by the aid for pre-commercialisation activities is PLN ……………………….. (say: ……………. zloty).
6. as part of *de minimis* aid is PLN ........................... (say: ………………………………. zloty)[[10]](#footnote-11);
7. According to the conditions specified in the Agreement, the Centre grants funding of no more than PLN  
   ................... ( say ……………. zloty), which is the equivalent of EUR ………………………… (say: EUR ………… ):
8. the maximum amount of eligible costs to be covered by the aid for preparing a feasibility study PLN ……………………….. (say: ……………. zloty).
9. the maximum funding for industrial research and experimental development is PLN ..................... (say: ……………. zloty).
10. the maximum funding for pre-commercialisation activities is PLN ..................... (say: ……………. zloty).
11. as part of de minimis aid is PLN ........................... (say: ………………………………. zloty)[[11]](#footnote-12);
12. The funding provided for in (3) is paid with a division into:
    1. 85% of the funding amount in the form of payment from the budget of European funds, which is PLN ........................ (say:.......................... zloty) and
    2. 15% of the funding amount from the resources of a designated subsidy, which is PLN ........................ (say:..........................zloty).
13. The maximum level of funding as provided for in (3) must not exceed …………… % of the total amount of eligible costs as provided for in (2).
14. Expenditures exceeding the total amount of eligible costs specified in (2), including expenditures arising from the increase in the total cost of Project implementation after the conclusion of the Agreement, shall be incurred by the Project Promoter and shall constitute non-eligible costs.
15. Indirect costs shall be settled on the basis of a flat rate of 25% of the value of the Project’s eligible direct costs, excluding subcontracting costs and shall be PLN …………….(say: ……………. zloty).
16. The Project Promoter shall provide financing for the costs constituting the required own contribution and non-eligible costs necessary for Project implementation.
17. In the case of a change in the amount of expenditures eligible to be covered by the subsidy due to changes in the scope of the Project, the amount of granted funding can be decreased following the Centre’s consent.
18. State aid under the Project, assigned to the feasibility study, fundamental research, industrial research, experimental development or pre-commercialisation activities, the intensity of which is defined on the basis of provisions of the MSHE Regulation, shall be granted to enterprises. A research unit implements the Project as part of its non-economic activities, does not receive state aid and can receive funding up to 100% of eligible costs.
19. The funding is provided to the Project Promoter’s bank account No. …………………... . The Project Promoter shall open separate bank accounts for the purposes of the Project[[12]](#footnote-13).
20. Until receiving the refund or advance payment, the Project Promoter shall finance the implementation of the Project from their own resources.
21. Funding for the research part of the Project is provided following a favourable assessment of the Report  
    after the completion of the feasibility study.
22. Funding for the pre-commercialisation activities is provided following a favourable assessment of the Report after the completion of the research part of the Project.

# § 7. Cost eligibility

1. The cost eligibility period for the Project is the period of implementation, which starts on .................. and ends on …………………….
2. The costs incurred in the Project shall be:
3. necessary for the implementation of the Project’s objectives;
4. consistent with the Project budget;
5. posted and documented in accordance with accounting regulations and the accounting policy applicable to the Project Promoter;
6. incurred in the period of Project implementation indicated in (1);
7. incurred in accordance with the rules of reasonable financial management, particularly the best ratio of expenditure to profit;
8. incurred in accordance with the *Cost eligibility guide*.
9. in compliance with the applicable EU and domestic laws, in particular the Public Procurement Law (if applicable).
10. The Centre verifies the incurred expenditures, listed in the Final Report as provided for in § 9 (1) (4) of the Agreement, on the basis of proofs of expenditures, which are in the form of certificates from an independent auditor, confirming that the submitted costs have been incurred in compliance with the Guidelines, Regulations, domestic law and the relevant national accounting practices[[13]](#footnote-14).
11. The auditor must have the qualifications necessary to carry out statutory audits of accounting documents.
12. A certificate issued by a competent and independent public officer recognised by the relevant national authorities as having a budget and financial control capacity over the entity incurring the costs, and who has not been involved in the preparation of financial statements, certifying that the claimed costs are incurred in accordance with the Guidelines, Regulations, the national law, and relevant national accounting practices, will also be accepted as sufficient proof of expenditure incurred.
13. The certificates as provided for in (3) and (5) should cover all costs incurred in the Project by the Project Promoter.
14. Where an audit is carried out in the Project, as provided for in § 13 of the Agreement, the audit report will be considered sufficient proof of expenditure incurred by the Project Promoter.
15. If the Project Promoter begins the implementation of the Project before the day of submitting the project proposal or on the day of submitting the project proposal, all Project costs will be considered non-eligible.
16. The costs of implementing the results of industrial research and experimental development, or experimental development, shall not be eligible costs.
17. If the Agreement is terminated in accordance with § 14 (1-4) of the Agreement, the Centre may consider ineligible all, or a part of, costs incurred under the Project by the Project Promoter.
18. If the Project Promoter’s own contribution is not provided or incorrectly documented, the Centre will be authorised to request the reimbursement of the part of resources from the funding in the amount proportional to the part of the own contribution that was not provided or was incorrectly documented.

# § 8. Funding conditions and form

1. The payment of funding for indirect costs depends on reporting other expenditures than indirect costs.
2. The first advance payment for Project implementation, up to 30% of Project funding and no more than 100% of funding for preparing the feasibility study[[14]](#footnote-15), is paid out to the Project Promoter within 30 days from the day of concluding the Agreement, provided that a collateral is established[[15]](#footnote-16), as provided for in § 18 (2) of the Agreement, subject to § 18 (4) of the Agreement. If the date of starting Project implementation is later than 90 days from the date of concluding the Agreement, the first advance payment is provided to the Project Promoter within 14 days of the date of starting Project implementation, provided that a collateral is established[[16]](#footnote-17), as provided for in § 18 (2), subject to § 18 (4) of the Agreement. Subsequent advance payments are provided on the basis of payment requests submitted by the Project Promoter[[17]](#footnote-18), subject to (4) within 15 days of the Centre’s approval of the request. In justified cases, the Centre may change the amount of advance or refund instalments depending on the financial condition of the Centre or the Project Promoter.
3. To receive the subsequent advance payment, it is necessary to provide proof of incurring the costs representing at least 70% of all paid out advances
4. To obtain the subsequent advance payment, after fulfilling the condition provided for in (3) or to obtain a refund of the incurred costs, the Project Promoter shall submit to the Centre a payment request (in electronic form with qualified electronic signature or trusted signature or in printed version and electronic copy of the document identical with printed version), no later than by 31 October of a given budget year.
5. The Project Promoter notified by the Centre of any errors or gaps in the submitted payment request shall remove them within 14 days of receiving notice. The Centre may supplement the payment request or amend typographical or calculation errors contained in it without the need to obtain the Project Promoter’s approval. The Centre informs the Project Promoter about the scope of amendments and additions introduced.
6. Failure on the part of the Project Promoter to remove the errors or gaps in the payment request might lead to its rejection and suspension of payment of funding or to approving the payment request only with regard to the eligible amount.
7. The Centre will verify the payment request within 60 days of receiving the correct and complete payment request. The payment of an advance or refund shall not be equivalent to the approval of the costs incurred.
8. The funds received but not used in a given budget year may be used in the subsequent budget year of Project implementation without the need to amend the Agreement.
9. If the payment request is not submitted within the period specified in (4), the Project Promoter shall submit an adjusted payment schedule (until 31 October of a given budget year). Failure to make an appropriate adjustment of the payment schedule might result in losing the right to funding in the amount of undisbursed funds for a given year, in accordance with the payment schedule, which will not change the material scope of the Project. The Project Promoter shall cover the costs corresponding to the amount of lost funding from its own resources.
10. If the bank account is changed, the Project Promoter shall immediately inform the Centre of such a change in writing, at the latest on the day of submitting the payment request, or in electronic version (with qualified electronic signature). Changes of the bank account number do not require amending the Agreement.
11. If the Centre makes a payment to a bank account with an incorrect number as a result of non-performance of the obligation provided for in (10), the costs connected with another transfer and all consequences of claims for funds representing the unjust enrichment of a third party, including the consequences of loss of funds by the Centre, shall be borne by the Project Promoter. The Project Promoter and the unjustly enriched third party shall be jointly and severally responsible and shall return to the Centre, at the Centre’s request, the full amount of funds transferred to an incorrect bank account number. The Centre declares that, following the return of all funds, the Centre shall provide the Project Promoter with the title to recourse claims against the unjustly enriched party.
12. Revenues from the sale of research equipment purchased or produced from the resources making up the funding, obtained in the period of Project implementation, should be listed in the Final Report and shall be returned to the Centre’s bank account.
13. The total amount of bank interest obtained on the amount of funding provided for Project implementation is indicated by the Project Promoter in the Final Report and returned to the Centre’s bank account.
14. After Project implementation is completed, the part of funding not used by the Project Promoter shall be returned to the bank account of the Centre along with the total amount of interest as provided for in (1) within 30 days from the completion of Project implementation.
15. The Project Promoter shall have documents confirming the costs incurred for Project implementation, taking into account the indirect costs settled at a flat rate. The documents shall be prepared and stored in accordance with the law. The original accounting document should be described with the following information: number of the Agreement, cost category, number of the task implemented in the Project and the amount of eligible costs.
16. The Project Promoter shall conduct separate accounting of financial resources by nature with the analytical division of cots, allowing the identification of financial resources spent on Project implementation. If, in accordance with the applicable law, the Project Promoter is not obliged to keep the abovementioned records, it shall keep records with the appropriate description pursuant to (15), to allow the identification of financial resources spent on Project implementation.
17. The Centre has the right to carry out inspections of documentation, which is mentioned in (15) at any time, in every phase and at every stage of Project implementation and within 5 years from the day of completing Project implementation.
18. The acceptance of the payment request or approval of the Report as provided for in § 9 (1) of the Agreement does not preclude the possibility of conclusions and results of the conducted inspections as provided for in (17) stating otherwise.
19. The payment of funding in a part making up payments from the budget of European funds shall be provided by the Centre in accordance with the payment schedule available on the website: www.bgk.com.pl.
20. The payment of funding in the part from the resources of a designated subsidy, as provided for in Article 46 (1) (1) of the Act is conditional on the Centre’s receiving the said designated subsidy from the state budget.
21. The Centre may correct obvious typographical or calculation errors in the payment request and Report, notifying the Project Promoter of this fact.
22. The Centre may commission an assessment of Project implementation and the payment request submitted for verification to a third party to receive an expert opinion.
23. The Project Promoter shall make available, for the purposes of verification, well-arranged and correctly described documentation as provided for in (15) at its headquarters (in one room), the Centre or institution authorised by it. At the Centre’s request, the Project Promoter shall submit the said documentation to the Centre in the form and within the time limit specified by the Centre.

# § 9. Project implementation monitoring

* + - 1. The Project Promoter submits to the Centre the following documents, which allow the monitoring, reporting and verification of the correct performance of the Agreement (Reports), in accordance with the template provided on the Centre’s website www.ncbr.gov.pl:

1. Annual report composed of the substantive and financial parts,
2. Report after the completion of the feasibility study composed of the substantive and financial parts[[18]](#footnote-19),
3. Report after the completion of the research part of the Project composed of the substantive and financial parts[[19]](#footnote-20),
4. Final Report,
5. Report on the implementation of Project results,
6. Ex-post Report.
7. For evaluation purposes, the Project Promoter appends the information indicated by the Centre to the Reports.
8. The Project Promoter submits the Annual Report within 60 days of the end of the reporting period, if the Project implementation in a given reporting period was longer than 6 months.
9. The first reporting period covers the period from the date of starting Project implementation, as provided for in § 7 (1) of the Agreement, until the end of the calendar year in which Project implementation started;
10. Every additional reporting period covers a full calendar year of Project implementation;
11. The last reporting period covers the period from the start of the last calendar year of Project implementation to the date of completing Project implementation.
12. If the day of completing Project implementation is at the latest on 30 June of the last year of Project implementation, the Project Promoter shall not submit the last Annual Report.
13. If the Project includes a feasibility study, the Project Promoter shall submit an additional Report after the completion of the feasibility study within 15 days of the completion of the feasibility study. In such a case, if the Project Promoter is required to submit an Annual Report within 6 months of completing the implementation of the research part of the Project, then, in accordance with (3), the Project Promoter will not be required to submit the Annual Report.
14. If the Project includes pre-commercialisation activities, the Project Promoter shall submit an additional Report after the completion of the research part of the Project, i.e. fundamental research, industrial research and experimental development within 60 days of the completion of such research. In such a case, if the Project Promoter is required to submit the Annual Report in accordance with (3) within the period of 6 months before the completion of the research part of the Project, the Project Promoter will not be required to submit the Annual Report.
15. The Final Report contains a report on Project implementation along with a description of Project results and the final financial settlement of the Project. The Final Report is submitted within 60 days of completing Project implementation.
16. The Final Report contains a report on the dissemination of industrial research or experimental development. In the Report, the Project Promoter shall indicate the forms of dissemination of these results along with the documents confirming that the information was disclosed to the public, in particular:
17. confirmation of participation in the conference along with its agenda, which contains a point regarding the presentation of results of the Project covered by the subsidy;
18. confirmation of publication in scientific or technical journals specified in the list prepared by the Ministry of Science and Higher Education (copy of a journal sample);
19. indication of the website featuring the database providing free access to raw research data;
20. provision of a data carrier with free software or software with an open access licence.
21. The Project Promoter appends a summary of the completed Project to the Final Report in the form of a short description (maximum two A4 pages) and photographic documentation.
22. The Project Promoter submits a Report on the implementation of Project results to the Centre, according to the template published on the Centre’s website, www.ncbr.gov.pl, within 30 days after a period of 3 years from the date of completing Project implementation as provided for in § 7 (1) of the Agreement. In cases defined in § 4 (3) (2) and (3), the Project Promoter shall submit copies of agreements provided for in § 4 (6) along with the Report on the implementation of Project results. The Project Promoter submits to the Centre copies of annexes to the concluded agreements, as provided for in § 4 (6) within 14 days of the date of their conclusion.
23. Within 30 days after a period of 5 years from the date of completing Project implementation, the Project Promoter shall submit an Ex-post Report. If the results of industrial research and experimental development are implemented by means of sales of rights or granting a licence for the exercise of rights to these results vested in the Project Promoter, the Project Promoter shall append a declaration on introducing the results of such research or work into the economic activities of the purchaser/licensee to the Ex-post Report.
24. The Centre has the right to request the Project Promoter to submit additional explanation to or supplement the submitted Report. The Project Promoter shall provide the information specified in the preceding sentence within 14 days of receiving notice from the Centre.
25. If the Centre finds irregularities in the Reports or appendices to Reports submitted by the Project Promoter, the Project Promoter shall remove these irregularities within 14 days of receiving notice.
26. The Centre’s assessment of the Annual Report following the completion of the feasibility study and Report following the completion of the research part of the Project is aimed particularly at determining whether:
27. the Project is being implemented in accordance with the Agreement;
28. the continued Project implementation will lead to the achievement of the assumed Project results and objectives.
29. The Centre’s assessment of the Final Report involves inspecting the compliance of Project performance with the conditions specified in the Agreement and is aimed at determining whether the Project can be considered:
30. completed;
31. completed, with a request to return the unused or incorrectly used funding along with interest calculated as for tax arrears from the date on which the Project Promoter receives funding to the date of return;
32. not fully completed or partly completed, with a request to return all or part of the funding along with interest calculated as for tax arrears from the date on which the Project Promoter receives funding to the date of return.
33. In the case of exceeding the permissible levels of state aid intensity[[20]](#footnote-21), the Project Promoter shall return to the Centre the part of funding exceeding the permissible levels of state aid intensity along with interest calculated as for tax arrears from the date on which the Project Promoter receives funding to the date of return.
34. During Project implementation and after its completion, the Project Promoter shall provide abstracts and references for all scientific publications created on the basis of Project results within 60 days of the publication date.
35. The Project Promoter shall provide to the Centre, in each year of Agreement performance, a copy of the R&D report[[21]](#footnote-22) for a given year, immediately after submission to the Central Statistical Office (Statistics Poland). Where the R&D Report has already been submitted to the Centre in connection with an obligation arising from a different agreement, the Project Promoter shall notify the Centre of the submission of the R&D Report and indicate the number of the related agreement.
36. If the implementation of the Project so far indicates that it is not possible to achieve the assumed Project results and objectives, in particular due to force majeure, scientific risk or a material and unforeseeable change in the socio-economic relations, making Project implementation impossible or undesirable for public interest. The Project Promoter shall immediately inform the Centre of this fact and submit an application to cease Project implementation.
37. If the Centre approves the application specified in (22):
    1. The Project Promoter shall immediately return to the Centre’s bank account the part of funding not used for Project implementation;
    2. The Project Promoter shall submit to the Centre (in printed and electronic form) a Final Report along with a settlement of the costs incurred as part of outstanding advances or refunds, within 30 days of the service to the Project Promoter of the letter from the Centre approving the termination of Project implementation.

24. If the implementation of the Project so far indicates that it is not possible to achieve the expected results and objectives of the Project, in particular as a result of force majeure, scientific risk or a significant and unpredictable change in socio-economic relations, which makes the implementation of the Project impossible or unjustifiable from the point of view of public interest, the Center may decide to stop further implementation of the Project. In the case referred to in the previous sentence, the beneficiary is not entitled to compensation - the beneficiary waives all financial claims for the Center's decision to discontinue further implementation of the Project.

25. If the Center makes a decision referred to in paragraph 24, the provisions of paragraph 23 shall apply accordingly.

# § 10. Competitiveness of expenditures

1. The Project Promoter prepares and conducts the public procurement procedure in a manner that ensures fair competition, the equal treatment of economic operators, transparency and effectiveness.
2. The Project Promoter awards public contracts in the following manner:
   * + - 1. In the case where the Project Promoter is required to award public contracts pursuant to Article 3 (1) of the Public Procurement Law or is required to apply the Public Procurement Law on the basis of other legal regulations, the provisions of the Public Procurement Law shall apply to awarding public contracts under the Project.
         2. where the Project Promoter is a different entity than the one indicated in (a), it awards public contracts in accordance with the *Contract Award Guidance as part of the EEC Financial Mechanism 2014-2021* and *Norway Grants 2014-2021*.
3. The Project Promoter, as provided for in (2) (a) applies the Contract Award Guidance as part of the EEC Financial Mechanism 2014-2021 and Norway Grants 2014-2021 for contracts with a value lower than indicated in Article 4 (8) of the Public Procurement Law and higher than PLN 50 thousand net.

# § 11. Promotion and information

The Project Promoter shall notify the public about receiving funding for the Project from the Centre, both during Project implementation and after its completion.

The Project Promoter shall comply with the rules specified in Appendix 3 to the Regulation - *Information and Communication Requirements EEA and Norway Grants 2014-2021*  and the [*Communication and Design Manual EEA and Norway Grants 2014-2021*](https://www.eog.gov.pl/media/69204/Podrecznik_komunikacji_EOG_Nor_PL.pdf).

The Project Promoter, at the request of the Centre, shall prepare photographic documentation and general information regarding the Project and its results not being trade secrets within the meaning of the Act of 16 April 1993 on Combating Unfair Competition. These data may be used for information and promotional measures, including publications available to the general public.

# § 12. Inspection and storage of documents

1. The inspections and audits under the Project are carried out in accordance with the provisions of the Agreement.
2. The Project Promoter shall submit to inspections and audits with regard to the Agreement being performed, conducted by the Centre and other authorised institutions at any time during Project implementation and within a period of 5 years from the date of Project completion.
3. As part of fulfilling the obligation provided for in (2), the Project Promoter shall at its own cost:
4. inform the inspectors of all locations (areas, rooms) where the Project is being implemented and the Project documentation is stored.
5. make available, at the request of the inspectors, all documentation connected with the Project and the Agreement being implemented, in accordance with § 8 (23) of the Agreement, including access to the computer accounting system, as well as all documents and computer files and all other carriers connected with the financial and technical management of the Project, including all confidential information connected with Project implementation (if it is necessary to determine the eligibility of costs incurred under the Project, also documents not directly connected with Project implementation should be made available),
6. provides the inspectors with access to all areas and rooms in which the Project is being implemented and enables them to inspect the fixed assets purchased, depreciated or generated as part of Project implementation.
7. provides oral and written explanation regarding Project implementation during the inspection and, at its own cost, ensures the presence of qualified individuals who can explain the spending of financial resources and other issues connected with Project implementation to the inspectors.
8. provides the inspectors, at their request, with statements, registers, printouts and also copies of documents connected with Project implementation, as well as ensures the presence of a person authorised to certify that the copies are true copies of the originals.
9. Inspections at the Project site are carried out on the basis of written authorisations for a specific person to conduct the inspection.
10. In justified cases, including due to a large amount of documentation or the urgent need for the Project Promoter to submit explanations to substantive issues, the Centre may postpone the inspection.
11. During the inspection, the inspectors are authorised to document the course of inspection activities by taking photographs, recording video or sound, to the extent required by the subject of the inspection.
12. Failure to fulfil any of the obligations mentioned in (3) by the Project Promoter is treated as obstructing or preventing the inspection.
13. The Project Promoter is notified of a planned inspection no later than 5 days before its starting date. The notification shall be sent by traditional mail and may also be sent by electronic means.
14. When the inspection is completed, an inspection report is prepared, which, after it is signed by authorised individuals, is submitted to the Project Promoter in 2 copies. 1 copy of the inspection report is submitted to the Centre by the Project Promoter.
15. The Project Promoter has the right to submit justified reservations to the inspection report in writing within 14 days of receiving it. At the request of the Project Promoter, the effective deadline submitted before the final date for submitting objections can be extended by the Centre for a definite time.
16. The Centre has the right to amend obvious errors in the inspection report, at any time, according to official procedure or at the request of the inspected entity. Information on the scope of the amendment is submitted without undue delay to the Project Promoter.
17. In the process of considering the objections, the Centre has the right to conduct additional inspection actions or request documents or additional explanations in writing or in electronic form.
18. The objections mentioned in (1) may be withdrawn at any time. Withdrawn objections are not considered.
19. In the case of a refusal to sign the inspection report, the Project Promoter shall submit a written justification along with 1 copy of the unsigned inspection report within 14 days of the Project Promoter's receipt of the inspection report.
20. The Centre, after considering the objections, shall prepare the final inspection conclusions containing the amended inspection findings or a written statement regarding the submitted objections, along with a justification of refusal to amend the findings. The final inspection conclusions shall be submitted to the Project Promoter.
21. If needed, post-inspection guidelines or recommendations are added to the inspection conclusions. The inspection conclusions include the date of providing the Centre with the information on the method of performing the post-inspection guidelines or the use of recommendations. The date is determined taking into consideration the nature of these guidelines and recommendations.
22. Objections to final inspection conclusions are not allowed.
23. If the Project Promoter submits objections as provided for in (10) or refuses to sign the report, it is still required to follow the guidelines.
24. The Project Promoter notifies the Centre within a prescribed time limit on the manner of implementing the post-inspection guidelines or recommendations.
25. If there are any objections as to the validity of expenditures eligible for the subsidy or the manner of implementing the Agreement, the Centre shall notify the Project Promoter in writing of this fact and shall be authorised to suspend the payment of funding until the objections are fully resolved.
26. If any irregularities are found during an inspection of the validity of costs eligible for the subsidy, the Centre, or an institution authorised by it or other institution authorised to perform inspections on the basis of separate regulations, may carry out an inspection with the purpose of re-assessing cost eligibility and the validity of the manner of performing the Agreement.
27. During the on-site inspection of the Project, the Centre or other institution authorised to perform inspections on the basis of separate regulations may verify whether the Project Promoter acquired the right to deduct the calculated VAT from the amount of VAT.
28. During the on-site inspection, the institution authorised to carry out inspections may verify the validity of using a flat rate in accordance with the limit of costs covered by the flat rate.
29. If the Centre receives information of suspected irregularities in Project implementation or the appearance of other material defects on the part of the Project Promoter, the Centre or other authorised institution may carry out an ad hoc inspection without notice, as provided for in (8). An ad hoc inspection may also result from the necessity to urgently verify any emergent facts or events. The provisions of (1)-(7) and (9)-(20) shall apply mutatis mutandis to ad hoc inspections.
30. The Project Promoter shall submit to the Centre copies of post-inspection information and post-inspection guidelines or other equivalent documents prepared by the inspecting institutions if the inspection results concern the Project, within 7 days of receiving these documents.
31. The Project Promoter shall store all data connected with Project implementation in a manner guaranteeing appropriate information security, in particular documentation connected with financial and technical management and procedures of concluding contracts with economic operators, for a period of at least 5 years from Project completion[[22]](#footnote-23).
32. The time limit specified in (26) is the minimum time limit. The Centre may extend the period during which the Project Promoter must store the documentation connected with the Project being implemented, of which it shall inform the Project Promoter.
33. If the Project Promoter suspends or ceases economic activities before the date until which it is required to keep the documents, the Project Promoter shall immediately notify the Centre in writing of the place where the documents connected with the Project are being kept.

# § 13. Project audit

# The Project, in which the funding value exceeds PLN 3 million, shall be subject to a mandatory external audit.

# An audit is an eligible cost if it started after the implementation of planned expenditures connected with Project implementation and is conducted in accordance with the guidelines constituting Appendix No. 3 to the *Cost eligibility guide.*

# The Project Promoter submits the audit report to the Centre along with the Final Report. The Project Promoter shall comply with the guidelines from the audit and include them in the Final Report.

# The report mentioned in (3) shall be kept by the Project Promoter for a period specified in § 12 (26) of the Agreement and shall be made available to the Centre on request.

# The report mentioned in (3) shall constitute proof of incurring the expenditures specified in § 7 (3) if the audit has been performed in accordance with the guidelines constituting Appendix No. 3 to the *Cost eligiblity guide*.

# The entity conducting the audit shall be selected by the Project Promoter according to the rules specified in § 10 of the Agreement and shall ensure that the audit is conducted by an auditor fulfilling the conditions provided for in Article 286 of the APF. The entity conducting the audit or auditor shall not be an entity or auditor dependent on the audited entity or an entity or auditor conducting the audit of the financial statements of the audited entity within the period of 3 years preceding the audit.

# § 14. The mode and conditions of terminating the Agreement and withholding payment

1. The Agreement may be terminated by either of the Parties with one month's notice. Notice of termination must be provided in writing or shall otherwise be null and void and must include the reasons for the termination of the Agreement.
2. The Centre may suspend funding or terminate the Agreement with one month’s notice, in particular where:
3. the Project Promoter refuses to be inspected or obstructs the inspection, or fails to follow the post-inspection guidelines within the specified deadline.
4. the Project Promoter has introduced legal and organisational changes in its statutes putting the performance of the Agreement at risk or having a potential adverse effect on Project implementation or achieving the objectives of the Project;
5. the Project Promoter has failed to submit the payment request or Report within the specified time limit;
6. the Project Promoter has failed to amend the payment request or Report containing omissions or errors within the specified time limit;
7. the Project Promoter has not submitted information and explanations regarding Project implementation;
8. the Project Promoter has failed to promote the Project in a manner specified in the Agreement;
9. the Report specified in § 9 of the Agreement has not been approved;
10. further Project implementation by the Project Promoter is not possible or is undesirable.
11. a force majeure event occurs, having or potentially having adverse impact on Project implementation or achieving its objectives;
12. the Project Promoter has failed to fulfil its obligations specified in § 3 (4) (2) and (5) of the Agreement;
13. the Project Promoter has failed to submit proof of incurring expenditures specified in § 7 (8) and (10) of the Agreement.
14. The Project Promoter has failed to provide the Project audit specified in § 13 of the Agreement.
15. The Centre may suspend funding or terminate the Agreement with immediate effect, in particular where:
16. the Project Promoter has failed to start Project implementation for a period longer than 3 months from the date of starting Project implementation specified in the Agreement;
17. the Project Promoter has ceased to implement the Project or has been implementing it in a manner inconsistent with the Agreement or in breach of the law;
18. no progress has been made in Project implementation in relation to the dates specified in the project proposal, which leads to justified suspicion that the Project will not be implemented or its objective will not be achieved;
19. The Project Promoter no longer performs economic activities, against which a winding-up, restructuring or insolvency procedure has been initiated or which has been under forced administration, having or potentially having an adverse effect on Project implementation or achieving its objectives;
20. the Project Promoter provided false or inaccurate statements or documents to obtain funding or at the stage of Project implementation, or within 5 years of the day of Project completion;
21. the Project Promoter has committed irregularities or failed to remove their causes and effects within the time limit indicated by the inspecting entity;
22. the Project objective has not been achieved;
23. the Project Promoter has purchased goods or services in breach of the rules specified in the Agreement;
24. the Project Promoter has failed to establish or provide a performance guarantee within the time limit and in the form specified by the Centre;
25. the Project Promoter has misused the funding, unduly received the funding or received an excessive amount of the funding;
26. the Project Promoter has used the funding in breach of the Agreement;
27. the Project Promoter is obliged to return the aid due to a decision of the European Commission;
28. a ban as specified in Article 12 (1) of the Act of 15 June 2012 Concerning the Effect of Employing Foreigners Residing Illegally on the Territory of the Republic of Poland was placed on the Project Promoter,
29. the Project Promoter, without the Centre’s consent, has failed to carry out a fundamental research, industrial research or experimental development activities planned in the project proposal or has carried it out only partly;
30. the Project Promoter has sold or granted licence to exercise the rights to the results of industrial research or experimental development under conditions inconsistent with the Agreement;
31. the Project Promoter has not provided the Centre with a copy of the contract for the sale of rights to the results of industrial research or experimental development/copy of the licence agreement or its annexes or an amendment of the sale agreement/licence agreement prevents the correct performance of the Agreement;
32. the Project Promoter, despite the obligation to return the financial resources allocated to the implementation of programmes financed from European funds or funds from national sources allocated to the implementation of a project financed by the Centre, has failed to return these resources by the date indicated by the Centre, unless the Project Promoter has been granted a relief.
33. pre-trial proceedings in a case that might affect Project implementation have been instituted against the Project Promoter or individuals for which the Project Promoter is responsible pursuant to the Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty;
34. within a period of 3 years preceding the conclusion of the Agreement or during Project implementation, the Centre terminated another grant agreement or agreement for the performance and financing of a project with the Project Promoter through the fault of the Project Promoter or for reasons attributable to them – this does not apply to cases of terminating the agreement due to force majeure or if the Centre confirms the existence of circumstances described in § 14 (9) and § 15 (4) and (6) of the Agreement;
35. The Centre shall terminate the Agreement with immediate effect if the Project Promoter has started Project implementation earlier than on the day following the day of submitting the project proposal, i.e. when the Project does not fulfil the incentive effect requirement as provided for in state aid regulations.
36. The Centre may suspend funding if the amount provided in the payment request is undue or the Centre has taken action in connection with potential irregularities affecting the specific expenditures.
37. If the funding is suspended, until the disbursement of another tranche of funding or until Agreement termination, the Project Promoter shall finance Project implementation from its own resources.
38. Terminating the Agreement by means of the procedures mentioned in (1)-(4) shall not release the Project Promoter from the obligation to submit the Final Report within 25 days of the day of terminating the Agreement and to keep documentation connected with Project implementation and make it available at the Centre's request.
39. If the Agreement is terminated according to the procedures specified in (1)-(4) the Project Promoter is not eligible for compensation.
40. The Project Promoter shall not be liable towards the Centre or found in breach of the Agreement in connection with the non-performance or inadequate performance of the obligations arising from the Agreement to the extent that such non-performance or inadequate performance is the result of a force majeure event.
41. The Project Promoter shall immediately inform the Centre about the occurrence of an event of force majeure and provide proof of such circumstances by submitting documents confirming the force majeure event and indicating the impact of the event on the course of Project implementation.

# § 15. Repayment and recovery of funds[[23]](#footnote-24)

1. Subject to the provisions listed below, if the Agreement is terminated on the basis of § 14 (1)-(4) of the Agreement, the Centre shall request the Project Promoter to repay the whole amount of received funding within 14 days of the date of serving the request, along with interest as for tax arrears, calculated from the day of transferring the funds to the bank account of the Project Promoter to the day of their repayment, along with the bank interest on the funding provided in the form of advance payment or cost refund, subject to (4) and (6). Funding shall be returned to the bank accounts indicated by the Centre with the transfer name containing the following information:
2. Project number;
3. information on the principal and interest;
4. repayment title;
5. the year in which the funds being repaid were provided.
6. For the reimbursement of expenses which were the basis for calculating expenditures covered by the flat rate, the Project Promoter must return the expenditures covered by the flat rate on a pro rata basis.
7. If the funds are not returned in full with interest calculated as for tax arrears, the payment is credited on a pro rata basis towards the principal amount understood as the amount of funding to be reimbursed (without interest) and the amount of interest as for tax arrears according to the proportion between the principal and interest on the day of payment.
8. In justified cases, the Centre may demand the repayment of only a part of the provided funding.
9. The Centre is authorised to request the Project Promoter to return all of the costs deemed non-eligible as a result of the conducted inspection as provided for in § 12 of the Agreement. The Project Promoter returns the funding according to the rules indicated in (1).
10. If the project implementation fails due to a force majeure event, scientific risk associated with research or a material and unforeseeable change in the socio-economic relations, or if an analysis shows that the project implementation failure did not result from unauthorised actions or omissions on the part of the Project Promoter, the Project Promoter, to the extent indicated by the Centre, will not be required to return the funding. In such a case, only the amounts not spent until the day of termination shall be returned according to the rules specified in this paragraph.
11. The Project Promoter shall cover the documented costs of debt collection actions carried out against it.
12. It is possible, at the Project Promoter’s justified request, to postpone the reimbursement date, divide the reimbursement into instalments or write off the balance due in accordance with the applicable regulations.
13. Terminating the Agreement pursuant to § 14 (2)-(4) of the Agreement shall prevent the Project Promoter from receiving financial aid from state funds being at the disposal of the Centre (exclusion) for a period of 3 years from the date of termination.
14. In particularly justified cases, the Centre may choose not to apply exclusion as provided for in (9).
15. The Act of 23 April 1964 – the Polish Civil Code shall apply in all cases connected with claiming payment.

# § 16. Financial liability towards the Centre for Project implementation

1. The Project Promoter is liable towards the Centre for the correct performance of the Agreement.

# § 17. The procedure and scope of amendments to the Agreement

1. The Parties may amend the Agreement by way of making consistent declarations in writing under pain of nullity, subject to (2)-(4).
2. A change in:
3. the address or manner of representation of the Project Promoter;
4. the bank account numbers,
5. the personnel involved in Project implementation, provided that the new personnel member has equivalent skills and experience, subject to (4);

− does not require amending the Agreement by annexing, but requires notifying the Centre no later than 14 days from the day of the appearance of causes justifying the amendment.

1. A change:
2. regarding the reallocation between individual types of costs that do not exceed 10% of the amount listed in the category, to which they are reallocated (+10%), with the reservation that overheads are settled on a flat rate basis and must not be increased.
3. involving the dates of implementation of individual tasks/stages of the Project completion schedule by no more than 4 months, with no change to the Project completion date;
4. regarding the reallocation of received and unused funds between budget years, unless they affect the details of the Project completion schedule and the Project’s budget;
5. in the amounts of eligible costs for the task/stage subject to reallocation (+20%), maintaining the permissible levels of state aid intensity, subject to reallocations specified in (1);

− does not require amending the Agreement by annexing, but requires notifying the Centre at the latest on the day of submitting the payment request, in the following Report and during Project inspection.

1. A change in:
   1. the legal and organisational status of the Project Promoter;
   2. the payment schedule, if it has no effect on the date of Project completion;
   3. the Project Manager;

− does not require amending the Agreement by annexing, but requires the Centre’s consent, with the reservation that the lack of response from the Centre with regard to the application to change the Project Manager within 30 days from its receipt by the Centre shall be considered as approval of the new Project Manager.

1. Transferring funds between expenditure types covered by the flat rate and other categories of expenditures under the Project is not allowed.
2. Amending the Agreement in a way that results in the Project's not being granted funding in a time when the Project is subject to assessment as part of the project selection procedure[[24]](#footnote-25) is not allowed.
3. If there are necessary amendments to the Project which must be made in the form of an annex or which require the Centre's consent, the Project Promoter shall submit a request to the Centre to accept the amendments, listing the scope of amendments and providing justifications, no later than 14 days from the day of the appearance of causes justifying the amendment. The Centre may refuse to accept the amendments in the Project submitted by the Project Promoter without justification if they are submitted later than 30 days before the planned Project completion date.
4. The Centre has the right to request the Project Promoter to submit additional explanation to or supplement the submitted Project amendment request. The Project Promoter shall provide the said information within 14 days of receiving notice from the Centre.
5. In the case of enterprises, cost reallocations may not result in an increase in the amount of state aid or de minimis aid granted to a given enterprise.

# § 18. Guarantee of the correct performance of the Agreement[[25]](#footnote-26)

1. The funding shall be paid after the Project Promoter has established and provided a performance guarantee in the form provided for in (2), subject to (4) and (5).
2. The guarantee mentioned in (1), subject to (7), is established in the amount of 100% of the funding amount specified in § 6 (3) of the Agreement, for the period of Project implementation and for a period of 5 years from the day of Project completion, in the form of a blank promissory note with the clause “non-endorsable” and a signature certified by a civil law notary affixed in the presence of a person authorised by the Centre, along with a blank promissory note agreement.
3. The Project Promoter shall submit to the Centre a properly issued guarantee provided for in (2) within 14 days of the day of concluding the Agreement.
4. Notwithstanding the provisions of (1)-(3), if it has legitimate doubts as to the correct performance of the Agreement or following an analysis, the Centre may request the Project Promoter to establish an additional or different guarantee than specified in (2)
5. The guarantee specified in (4) is established at 100% of the funding amount provided for in § 6 (3) of the Agreement in the form of:
6. bank surety;
7. bank guarantee;
8. insurance guarantee;
9. registered pledge; where the property covered by the pledge may be an object of insurance, the pledge is established along with the assignment of rights from the insurance policy for the property being the object of the pledge;
10. assignment by way of security of the Project Promoter's movable property.
11. mortgage; if the Centre deems it necessary, a mortgage shall be established along with assignment of insurance policy of the mortgaged property;
12. Civil Code warranty.
13. Exemption from the guarantee provided for in this paragraph is provided at the request of the Project Promoter after 5 years from the day of Project completion. At the request of the Project Promoter, the Centre may exempt the Project Promoter from the guarantee after Project completion.
14. The Centre reserves the right to pursue rights from a given form of guarantee to the amount corresponding to the amount of financial breach plus the interest due to the Centre and the debt collection costs incurred by the Centre, but no more than up to the amount of established guarantee.
15. Terminating the Agreement due to irregularities in Project implementation shall be sufficient grounds for exercising the guarantee.
16. In particularly justified cases, the Project Promoter may provide a guarantee in a different form than provided for in (5), subject to the Centre’s consent.   
    If the analysis of the Project Promoter’s financial situation indicates the financial risk of loss of funds paid as part of the granted funding, the Centre may adopt one of the following solutions[[26]](#footnote-27):
17. refuse to disburse the advance payment to the Project Promoter (the Project will be settled solely by means of refunds) or reduce the amount of the advance payment;
18. request the Project Promoter to provide an additional guarantee.
19. All matters connected with the guarantee are regulated by separate regulations applicable for a given form of guarantee.

# § 19. Confidential information

1. Confidential information includes all information connected with the activities of the Project Promoter , not made publicly available by the Project Promoter, having economic value, or the disclosure of which to third parties might harm the Project Promoter and in relation to which the Project Promoter have taken the necessary measures to maintain its confidentiality, in any form, marked as confidential and disclosed to the Centre in the process of submitting the project proposal and during Project implementation (Confidential Information).
2. During Project implementation and in a period of 10 years from the day of Project completion, the Centre shall exercise due care to ensure the proper measures to protect confidential information against access by unauthorised individuals and shall ensure that access to Confidential Information is provided only to the Centre's employees and individuals through whose agency the Centre carries out its actions.
3. The Centre and individuals having access to Confidential Information are authorised to use Confidential Information only to the extent necessary for the correct performance of the Agreement.

# § 20. Communications

1. The Parties shall use the following forms of communication in performing the Agreement:
2. registered mail;
3. courier;
4. e-PUAP authorisation;
5. electronic mail[[27]](#footnote-28).
6. Statements, requests, notifications and information shall be deemed served when a letter or courier parcel is received, an e-PUAP authorisation is completed or a confirmation of receipt by the recipient of electronic mail is received.
7. Correspondence shall be deemed served if the Project Promoter fails to provide information on a change in the address data for communications or the correspondence is returned with a note from the postal operator that the parcel cannot be delivered, e.g. “the addressee has moved”, “not collected in time”, “unknown addressee”.
8. If the Project Promoter refuses to accept correspondence, it is deemed served on the day the Project Promoter has submitted the declaration of refusal.
9. All communications connected with the performance of the Agreement shall bear the Agreement number.
10. The addresses for service are:

……………………………………………………………………………………………………………………….….

ePUAP:………………………………………………….

1. If the data mentioned in (6) changes, the Party to which the change refers shall notify the other Party about this fact immediately but no later than within 14 days from the change of data. Until notification, the correspondence sent to the previous addresses shall be deemed served.

# § 21. Final provisions

1. Any doubts which may arise in the course of Project implementation and connected with the interpretation of the Agreement shall be settled primarily by way of negotiation between the Parties. If there are any indications to terminate the Agreement with immediate effect, it will be possible to withdraw from conducting negotiations.
2. If the Parties fail to reach an agreement, the disputes shall be settled by a common court having jurisdiction over the registered office of the Centre.

For evaluation purposes, the Project Promoter, in the period of Project implementation and in the period of 5 years from the date of Project completion, shall cooperate with the Centre or the institution authorised by the Centre, including, in particular, in respect of:

providing information regarding the completed Project,

submitting information on the economic effects and other benefits generated by Project implementation,

taking part in surveys and interviews, and providing information necessary for evaluation.

1. This Contract was drawn up in two counterparts, one for each Party.
2. This Agreement comes into effect on the day that the last Party signs this Agreement.
3. The following appendices form integral parts hereof:
4. payment schedule;
5. Project budget;
6. copy of a document confirming the authorisation of the Project Promoter’s representative to act for and on its behalf (power of attorney, other)[[28]](#footnote-29)
7. project proposal.

For the Centre: For the Project Promoter:

…………………………………………… …………………………………………………

1. This Agreement constitutes an agreement for the performance and financing of the Project as provided for in Article 41 (1) of the Act. [↑](#footnote-ref-2)
2. * (for a Joint Stock Company (Spółka Akcyjna, S.A.) and a Limited Joint-Stock Partnership (Spółka komandytowo-akcyjna, S.K.A.))

   *<name>* Spółka Akcyjna/ Spółka Komandytowo-Akcyjna,

   with its registered office in …………………… (city/town), address: postcode ……………………, street ……………………, city/town …………………………. entered in the Register of Entrepreneurs maintained by the District Court ……………………, under KRS No. ………………….……, as at ………….. with a share capital of PLN ……………………, paid up in the amount of ……………………, NIP (Tax ID) ……………………, REGON (business registry number) ……………………, represented by (representation should be as documented, i.e. as in the National Court Register or letter of appointment, according to the data as at the day of concluding this Agreement): ……………………,

   * (for a limited liability company (Spółka z ograniczoną odpowiedzialnością, sp. z o.o.))

   *<name>* Spółka z ograniczoną odpowiedzialnością,

   with its registered office in …………………… (city/town), address: postcode ……………………, street ……………………, city/town …………………………. entered in the Register of Entrepreneurs maintained by the District Court ……………………, under KRS No. ………………….……, as at ………….. with a share capital of PLN ……………………, paid up in the amount of ……………………, NIP (Tax ID) ……………………, REGON (business registry number) ……………………, represented by (representation should be as documented, i.e. as in the National Court Register or letter of appointment, according to the data as at the day of concluding this Agreement): ......................

   * (For a partnership (Spółka osobowa): registered partnership (Spółka jawna, sp.j.), limited partnership (Spółka komandytowa, sp.k.), professional partnership (Spółka partnerska, sp.p.))

   *<name>* Spółka Jawna/Spółka Komandytowa/Spółka Partnerska,

   with its registered office in …………………… (city/town), address: postcode ……………………, street ……………………, city/town …………………………. entered in the Register of Entrepreneurs maintained by the District Court ……………………, under KRS No. ………………….……, as at ………….., NIP (Tax ID) ……………………, REGON (business registry number) ……………………, represented by (representation should be as documented, i.e. as in the National Court Register or letter of appointment, according to the data as at the day of concluding this Agreement): ………………

   * (for a natural person conducting business activities)

   *<full name>,*……………………,

   Residing in …………………… (postcode ……………………), (street) ……………………., conducting business activities under the business name …………………… in …………………… (postcode ……………………), (street) ……………………, city/town …………………………. entered in the Central Business Register and Information Service, NIP (Tax ID) ……………………, REGON (business registry number) ……………………, PESEL (personal identification number) ……………….. *(optionally)* represented by:………………….., pursuant to ……………….

   * (for a private partnership (Spółka cywilna, s.c.))

   *<full name>,* …………………… residing in ………………… (postcode ……………………), (street) ……………………, city/town …………………………. entered in the Central Business Register and Information Service, REGON (business registry number) ……………………, PESEL (personal identification number) ………………..

   And *<full name>,* …………………… residing in ………………… (postcode ……………………), (street) ……………………, city/town …………………………. entered in the Central Business Register and Information Service, REGON (business registry number) ……………………, PESEL (personal identification number) ………………..

   conducting business activities as a private partnership under the name …………………… in …………………… address: postcode ……………………, street ……………………, city/town …………………………. NIP (Tax ID) ……………………., REGON (business registry number) ……………………, represented by: …………………… pursuant to the power of attorney/authorisation of ………………..., a certified copy of which is appended to this Agreement.

   (for a research unit)

   <name of research unit>………………………………, with its registered office in ………......................…….....(city/town), postcode ...........-................., (street) ................…............. …., city/town …………………………. No. .................… REGON (business registry number): ................……. NIP (Tax ID): ................….....................…. , represented by ……………………(full name, position) pursuant to the power of attorney/authorisation of ………………..., a certified copy of which is appended to this Agreement. [↑](#footnote-ref-3)
3. “MSHE Regulation” was preceded by the Regulation of the Ministry of Science and Higher Education of 25 February 2015 on the conditions and procedure of granting State aid and de minimis aid through the National Centre for Research and Development (Journal of Laws of 2015, item 299), which becomes invalid on the day when “MSHE Regulation” entries into force on the basis of Article 349 (2) of Act of 3 July 2018 – the Provisions introducing The Law on Higher Education and Science (Journal of Law of 2018, item 1669, Journal of Law of 2019, item 39 and 534 and Journal of Law of 2020, item 695, 875 and 1086). [↑](#footnote-ref-4)
4. In such cases it should be verified whether the own contribution submitted in this way does not lead to double financing of the expenditures and providing unjustified state aid for the enterprise. [↑](#footnote-ref-5)
5. If applicable. [↑](#footnote-ref-6)
6. The further sale of rights to the results of industrial research and experimental development, or experimental development is permitted under the condition of implementing the results by the primary purchaser in its own economic activities. [↑](#footnote-ref-7)
7. The price can be considered market price, if:

   a) its amount has been specified in an open, transparent and non-discriminating competitive sale procedure; or

   b) the valuation of an independent expert confirms that the price is at least equal to the market value; or

   c) the seller can prove that it has conducted price negotiations under conditions of a fully competitive market to obtain maximum economic benefit at the time of concluding the agreement, taking into account its statutory objectives; or

   d) in accordance with the Consortium Agreement, the enterprise has the pre-emption right to the intellectual property rights produced as a result of cooperation with the research unit and the cooperating entities have a mutual right to seek more economically favourable offers from third parties, the enterprises making up the Consortium must adjust their offers accordingly. [↑](#footnote-ref-8)
8. See footnote 11. [↑](#footnote-ref-9)
9. If applicable. [↑](#footnote-ref-10)
10. Only in the case of enterprises. [↑](#footnote-ref-11)
11. Only in the case of enterprises. [↑](#footnote-ref-12)
12. If, in accordance with applicable law, opening and maintaining of a separate bank account for the Project is impossible or prohibited, the Project Promoter is required to keep records of banking operations in a manner that allows identification of funds spent on the implementation of the Project. [↑](#footnote-ref-13)
13. If the total amount of funding from the programme for the relevant Project Promoter does not exceed EUR 325,000, submitting proofs of expenditures will not be required. [↑](#footnote-ref-14)
14. .If applicable. [↑](#footnote-ref-15)
15. If applicable. [↑](#footnote-ref-16)
16. If applicable. [↑](#footnote-ref-17)
17. A request for the payment of the advance or refund, prepared according to the template published on the Centre’s website – www.ncbr.gov.pl. [↑](#footnote-ref-18)
18. If applicable [↑](#footnote-ref-19)
19. If applicable [↑](#footnote-ref-20)
20. If applicable. [↑](#footnote-ref-21)
21. Report on research and development (R&D) activities submitted to the Central Statistical Office (Statistics Poland) pursuant to the Act of 29 June 1995 on Official Statistics. [↑](#footnote-ref-22)
22. In connection with the wording of Article 12 of Regulation 651/2014, for Projects involving state aid it is recommended to store documentation connected with the Project for a period of 10 years from the date of last assistance under an aid programme in case of the need to make the documentation available to other institutions than the Centre authorised to inspect the granted state aid. [↑](#footnote-ref-23)
23. Does not apply to projects in which the Project Promoter is a state budget unit. [↑](#footnote-ref-24)
24. Does not apply to situations in which the project selection criterion should be fulfilled only at the moment when aid is granted. [↑](#footnote-ref-25)
25. Does not apply to public finance sector entities or foundations whose only founder is the State Treasury or research institutes or institutes of the Łukasiewicz Research Network. [↑](#footnote-ref-26)
26. Does not apply to the Project Promoter who is an entity providing public services or services of general economic interest as provided for in Article 93 and Article 106 (2) of the Treaty on the Functioning of the European Union, or is a research institute within the meaning of the Act of 30 April 2010 on research institutes. [↑](#footnote-ref-27)
27. A delivery report is the proof of delivery of electronic mail to the addressee. [↑](#footnote-ref-28)
28. If applicable. [↑](#footnote-ref-29)