

**AGREEMENT ON DELEGATING CERTAIN POWERS AND
ACTIVITIES OF THE TRANSPORT OPERATIONAL
PROGRAMME'S MANAGING BODY
TO INTERMEDIARY SUBJECT OP TRANSPORT**

entered into between

the Czech Republic - Ministry of Transport
as the OP Transport managing body

and

The State Fund for Transport Infrastructure
as the intermediary subject of OP transport

Preamble

With regard to the fact that

- the Managing body of OPD, pursuant to the Government Resolution No. 175/2006 and the draft Transport Operational Program (the “**OPD**” hereinafter), plays the role of the OPD Managing Body for the program period 2007-2013, within the interpretation of the EC Council No.1083/2006, on general provisions relating to the European Regional Development Fund and the Cohesion Fund, and on cancellation of (EC) Regulation No.1260/1999, as amended (the “**General Regulation**” hereinafter),

- the Intermediary Subject (IS) is a legal entity established by the Act No. 104/2000 Coll., on the State Transport Infrastructure Fund, and on change of Act No. 171/1991 Coll., on the Powers of the Czech Republic Authorities regarding transfers of the state property to other persons, and on the Czech Republic National Property Fund, as amended (the “**SFDI Act**” hereinafter) for the purpose of funding particularly defined tasks in transport infrastructure which, accordingly with the purpose of it defined in the above quoted act, and accordingly with its budget, provides funding of national share in projects of the transport sector that are co-financed from OPD, as well as pre-funding of expenses that are supposed to be covered from the EU funds in projects of the transport sector that are co-financed from OPD,

- both parties to the agreement are led by the common interest to arrange for continuous and timely payments of projects in the transport sector co-financed from OPD as well as, within its competence, provide for fulfilment of conditions under which OPD contributions are provided to individual co-financed projects.

- Article 59 par. 2 of General Regulation allows a member state to appoint one or several intermediary subjects for the execution of some or all activities of the managing body,

- establishment of the State Transport Infrastructure Fund by the intermediary subject OPD and transfer of certain competencies of the OPD Managing Body (MB) to the OPD intermediary subject (IS) will simplify funding of projects that are co-financed from OPD that fall within the purpose of OPD IS, pursuant to the Act on SFDI,

- Article 12 of (EC) Commission Regulation No. 1828/2006 which defines the implementing rules for (EC) Council Directive No. 1083/2006 on general provisions relating to the European Regional Development Fund, European Social Fund and Cohesion Fund, and to the European Parliament and (EC) Council Regulation No. 1080/2006 on European Regional Development Fund, as amended (the “**Implementing Regulation**” hereinafter) requires written description of the conditions under which the intermediary subject fulfils the tasks of the managing body, and the Methodology of financial flows and check-ups of programs so-financed from structural funds, Cohesion Fund and the European Fisheries Fund for the program period of 2007-2013, as amended (the “**MFT**” hereinafter) requires written legal act for delegating the powers of managing body,

the parties agreed to enter into the below Agreement:

I Subject of Agreement

- I.1. The subject of the present Agreement is the adjustment of relationships between the parties to the Agreement regarding the establishment of SFDI as the OPD Intermediary Subject within the interpretation of General Regulation, Implementing Regulation and MFT, and related delegating if certain activities and powers of OPD MB to OPD IS, and contractual adjustment of relating activities, concerning particularly:
- participation of funds from the OPD IS's budget in the financing of national share in the transport sector projects that are co-financed from OPD;
 - participation of funds from the OPD IS's budget in the pre-financing and/or co-financing of expenses that are supposed to be covered from the EU funds concerning the transport sector projects that are co-financed from OPD;
 - coordination and planning of inspections performed by OPD MB with respect to its task within the EU funds implementation structure, and inspections performed by OPD IS pursuant to § 3 par. 2, Act on SFDI, concerning the transport sector projects co-financed from OPD, and mutual provision of monitoring information and outcomes, and inspections provided for by OPD CB and OPD IS in relation to these projects;
 - Providing OPD IS with OPD CB's OPD technical assistance financial sources (priority axis 7) in order to cover the expenses incurred to OPD IS in association with the execution of powers and activities delegated by OPD CB to OPD IS.

II Activities and powers of OPD IS

- II.1. Upon the present Agreement, OPD CB establishes OPD IS the Intermediary Subject of OPD, and delegates to OPD IS the below specified powers and activities relating to the implementation of OPD, and OPD IS takes these powers and activities over based on the present Agreement.
- II.2. The scope of powers and activities delegated to OPD IS:
- OPD IS enters into multi-annual contracts for project funding with recipients for the entire period of project implementation, and total sum needed for project implementation (i.e. national share + contribution from OPD) for projects selected and approved by OPD CB (or, more precisely, by the European Commission in case of big projects, pursuant to Art. 39 and fol. General Regulation) for funding;
 - OPD IS receives from recipients requests for payment of expenses that are supposed to be covered by the funds for pre-financing of expenses covered from the EU budget included in OPD, administers them in the ms2007 information system (Monitoring SF & FS system for the period of 2007-2013 which is divided in MSC2007, Monit7+ and Benefit7, the “**Monitoring system**” hereinafter), conducts administrative verification of every single request (Art. 13 par. 2 letter a) of Implementation Regulation) and approves reimbursement of these;

- conducts verification in cooperation with OPD CB and based on coordinated inspection plans, pursuant to Art. 60 letter b) of Implementation Regulation), and Art. 13 par. 2 of Implementation Regulation, with the exception of inspection of awarding public contract and inspection of selection procedures (i.e. inspection performed if no valid and effective law on public contract awarding applies to the recipient) conducted within the frame of a project approved to the recipient. If verification proceeds based on a sample, the sample selection method will be approved by OPD CB;
- makes sure that the recipients to enter into contracts for project funding with, as well as other subjects involved in activities relating to the funded project (e.g. contractors) keep accounts or tax records, accordingly with chapter 3.3 MFT (i.e. pursuant to Act No. 563/1991 Coll., on Accounting, as amended, alternatively to Act No. 586/1992 Coll., on Income Tax, as amended);
- provides for, pursuant to Art. 13 par. 4, Implementation Regulation, keeping records from verification (Art. 60 letter b) of General Regulation of the part of verification that was delegated to OPD CB;
- performs the below specified activities of OPD Financial division (chapter 2.3 MFT modified on the basis of specific OPD financial flows):
 - o provides for transfers of funds to recipients from funds obtained from OBD based on decision on provision of grant issued by OPD CB and intended for pre-financing of expenses that are supposed to be covered from the EU budget, this to be accomplished within 15 business days following the payment request approval so that the due term of relevant invoice was observed as well;
 - o keeps accurate and complete register of transfer of funds coming from OPS to recipients;
 - o notifies OPD CB of required data on performed transfers of funds to recipients based on its register (particularly the data about the recipient, amount of transferred funds, the date of payment to the recipient);
 - o in the performance of individual activities associated with fund transfers to recipients proceeds accordingly with the internal written work procedures (manuals);
- within the delegated powers and activities, OPD IS participates in the adjustment of the management and control system pursuant to Art. 58 of General Regulation, and observes the set management and control system;
- in relation to OPD IS being both the recipient and subject approving the use of funds for that portion of the OPD technical assistance funds that OPD IS will receive, OPD IS provides for adequate separation of functions for verification, pursuant to Art. 58 letter b) of Implementation Regulation), and Art. 13 par. 5 of Implementation Regulation;
- to the extent of payments conducted by it for keeping records and reported suspicions of nonconformity and confirmed nonconformities, reports to OPD CB, with the exception of suspicion of nonconformity that is rejected by OPD CB as apparently unjustified, pursuant to chapter 3.8.1 MFT;
- is liable for provision for funding projects selected and approved by OPD CB (or, more precisely, by the European Commission in case of big projects, pursuant to Art. 39 and fol. General Regulation) for funding from the OPD IS's budget throughout the period if implementation of these projects;

- uses the system for recording and keeping accounting records in electronic form for every payment transaction within the OPD IS-provided funding of projects co-financed from OPD;
- is liable for the correctness of data transferred from its information system to the Monitoring system, and/or to other information systems administered by OPD CB.

Detailed description of procedures for the performance of the powers and activities delegated by OPD CB to OPD IS will be provided in written work procedure OPD CB & OPD IS manuals whilst the OPD IS's work procedure manual subjects to the approval of OPD CB.

III Activities and powers of OPD CB in relation to Agreement

- III.1. OPD CB undertakes to transfer to OPD IS funds equalling the OPD financial allocation in such amount in which these will form a part of the state budget for respective year, in compliance with the decision on provision of grant issued by OPD CB, and with Act No. 218/2000 Coll., on Budget Rules, as amended, so that these funds are available to OPD IS for payment of expenses that are supposed to be covered by the OPD contributions for relevant projects, co-financing of which from OPD was approved by OPD CB (or, more precisely, by the European Commission in case of big projects, pursuant to Art. 39 and fol. General Regulation). OPD CB undertakes to transfer the funds in quarterly instalments always at the beginning of relevant calendar quarter, in compliance with the decision on grant provision, issued by OPD CB, and with the Act No. 218/2000 Coll., on Budget Rules, as amended.
- III.2. The OPD Intermediary Subject can be allocated technical assistance funds by the OPD Managing Body from the technical assistance budget (from the OPD priority axis 7 funds) to the extent defined by the OPD Managing Body to cover additional expenses suffered by the OPD Intermediary Subject in association with the performance of powers and activities delegated to the OPD Intermediary Subject upon this Agreement. The technical assistance funds will be transferred to OPD IS always at the beginning of relevant calendar quarter, in compliance with the decision on grant provision, issued by OPD CB, and with the Act No. 218/2000 Coll., on Budget Rules, as amended.
- III.3. OPD CB is obliged to perform regular inspection to see how OPD IS conducts delegated powers and activities whilst OPD IS undertakes to provide adequate cooperation necessary for the smooth run of these inspections. OPD IS further undertakes to implement recommendations and remedy potential omissions found in the OPD CB's inspection within the term set by OPD CB.

IV Obligations of OPD IS associated with the establishment of OPS IS

- IV.1. OPS IS undertakes to transfer funds from own budget intended for the payment of national share of funding projects co-financed from OPD simultaneously with funds coming from OPD in the way and within the terms specified in Art. II. 2 hereof.
- IV.2. OPD IS undertakes to cooperate in approving OPD and big projects with recipients, OPD CB and the European Commission, to the extent pre-agreed with OPD CB.

Furthermore, to the extent pre-agreed with OPD CB, OPD IS cooperates in getting funds from the European Investment Bank credit programs intended for coverage of funds for payment of national share of funding projects co-financed by OPD.

- IV.3. In the performance of activities and powers delegated to it by OPD CB, as well as in the performance of other obligations taken over upon the present Agreement, OPD IS undertakes to proceed in accordance with valid methodological procedures applicable for pre-financing and/or co-financing of investments from the European Regional Development Fund and the Cohesion Fund in the 2007-2013 program period, and particularly in compliance with MFT.
- IV.4. OPD IS undertakes to observe the procedures contained in the OPD CB's methodological instructions relating to OPD implementation and, to the adequate extent, transform them to relevant contracts for funding projects concluded with recipients.
- IV.5. OPD IS undertakes to perform the delegated powers and activities conscientiously and properly, draw up written work procedures for the performance of these activities (i.e. work procedure manuals), and put in place adequate internal check-up mechanisms leading to assurance of quality performance of the delegated powers and activities (i.e. particularly proceed in compliance with the OPD IS's work procedure manual approved by OPD CB). OPD IS is not authorized to transfer the powers and activities delegated to it upon the present Agreement to third subjects.
- IV.6. OPD IS hereby undertakes to allow for the performance of inspections by subjects authorized to do so in association of receipt of the state budget funds for pre-financing of expenses that are supposed to be covered from the EU budget, and further provision of these to recipients and, at the same time, it undertakes to provides these subjects with adequate assistance in the inspection performance.
- IV.7. OPD IS undertakes, upon request and to the extent required by OPD CB, to provide OPD CB with cooperation in monitoring projects co-financed from OPD, as well as monitoring the OPD program.
- IV.8. OPD IS undertakes, upon request and to the extent required by OPD CB, to provide OPD CB with cooperation in investigation, monitoring and exacting funds coming from OPD affected by nonconformity.
- IV.9. OPD IS undertakes, upon request and to the extent required by OPD CB, to provide OPD CB with cooperation in the preparation and implementation of the OPD plan (Art. 2 and fol. of Implementation Regulation).
- IV.10. Upon the request of OPD CB, OPD IS undertakes for projects co-financed from OPD in which OPD IS provides pre-financing of expenses that are to be covered by the EU source funds, to prepare estimates of volumes of applications for coverage of expenses for current and coming budget year, and submit these to OPD CB.

V Final provisions

- V.1. The present Agreement becomes valid and effective on the day when it is signed by both parties to the Agreement.
- V.2. The present Agreement can only be modified by written numbered supplements signed by both parties.
- V.3. The present Agreement may be terminated upon a written agreement of the parties to it as at the day on which the parties will agree.
- V.4. The present Agreement has been drawn up in five (5) counterparts each of which together shall be deemed an original. OPD CB shall receive three (3) counterparts, whilst OPD IS shall receive two (2) counterparts of the present Agreement.