

ANNEX I - GENERAL CONDITIONS

TITLE I - PROJECT/PROGRAMME FINANCING

ARTICLE 1 – GENERAL PRINCIPLE

- 1.1 The EDF financial contribution shall be limited to the amount specified in the Financing Agreement.
- 1.2 The provision of EDF financing shall be subject to fulfilment of the Beneficiary's obligations under this Financing Agreement.
- 1.3. The expenditure incurred by the Beneficiary before the entry into force of the Financing Agreement is not eligible for the EDF financing.

ARTICLE 2 - COST OVERRUNS AND COVERING THEM

- 2.1 Individual overruns of the budget headings of the Financing Agreement are dealt with by reallocating funds within this budget, in accordance with Article 22 of these General Conditions.
- 2.2 Wherever there is a risk of overrunning the global amount set in the Financing Agreement, the Beneficiary shall immediately inform the Commission and seek its prior approval for the corrective measures planned to cover the overrun, proposing either to scale down the project/programme or to draw on its own or other non-EDF resources.
- 2.3 If the project/programme cannot be scaled down, or if the overrun cannot be covered either by the Beneficiary's own resources or other resources, the Commission may, at the Beneficiary's duly substantiated request, decide to grant additional EDF financing. Should the Commission take such a decision, the excess costs shall be financed, without prejudice to the relevant EU rules and procedures, by the release of an additional financial contribution to be set by the Commission.

TITLE II - IMPLEMENTATION

ARTICLE 3 – GENERAL PRINCIPLE

The project/programme shall be implemented under the responsibility of the Beneficiary with the approval of the Commission.

ARTICLE 4 - PERIOD OF EXECUTION

- 4.1 The period of execution of the Financing Agreement shall comprise two phases:
- an operational implementation phase, in which the principal activities are carried out. This phase shall commence on the entry into force of the Financing Agreement and end with the opening of the closure phase;
 - a closure phase, during which final audits and evaluation are carried out and contracts and programme estimates for the implementation of the Financing Agreement are technically and financially closed. This phase shall end at the latest 24 months after the end of the operational implementation phase.
- 4.2 Costs related to the principal activities shall be eligible for EDF financing only if they have been incurred during the operational implementation phase. Costs related to final audits and evaluation and closure activities shall be eligible up to the end of the closure phase.
- 4.3 Any balance remaining from the EDF contribution will be automatically cancelled six months after the end of the period of execution.
- 4.4 In exceptional and duly substantiated cases, a request may be made for the extension of the operational implementation phase and correlatively of the period of execution. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the operational implementation phase and approved by the Commission before that latter date.
- 4.5 In exceptional and duly substantiated cases, and after the end of the operational implementation phase, a request may be made for the extension of the closure phase and correlatively of the period of execution. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the closure phase and approved by the Commission before that latter date.

TITRE III – PAYMENTS TO BE MADE BY THE COMMISSION TO THIRD PARTIES

ARTICLE 5 – DEADLINE FOR PAYMENTS TO BE MADE BY THE COMMISSION TO THIRD PARTIES

- 5.1 When the Commission is making payments related to contracts implementing the Financing Agreement and awarded by the Beneficiary, the Beneficiary shall undertake to provide the Commission with the contractor's requests for payment no more than 45 calendar days, for procurement contracts, and 22 calendar days, for grants, after registering an admissible payment request. The Beneficiary shall notify the Commission of the date of registration of this request. The payment request is not admissible if at least one essential requirement is not met. The time limit for payments may be suspended by the Commission by informing the Beneficiary, at any time during the period referred to above, that the payment request can not be met, either because the

amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the Commission which puts in doubt the eligibility of expenditure appearing in a payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The Commission shall inform the Beneficiary as soon as possible.

- 5.2 The deadline referred to in paragraph 1 shall also apply when payment is conditional on approval of a report. In this case, the request for payment can be considered admissible but the time limit for payment shall begin only when the Beneficiary has approved the report, either expressly, by notifying the contractor, or tacitly, by allowing the contractual deadline for approval to expire without sending the contractor a document formally suspending that deadline. The Beneficiary shall notify the Commission of the date of approval of the report.
- 5.3 In the event of any delay in forwarding payment requests attributable to the Beneficiary, the Commission shall not be obliged to pay the contractor the late-payment interest provided for in contracts, which will be payable by the Beneficiary.

TITRE IV – PAYMENTS TO BE MADE BY THE BENEFICIARY TO THIRD PARTIES THROUGH PROGRAMME ESTIMATES AND DISBURSEMENT TO BE MADE BY THE COMMISSION

ARTICLE 6 – GENERAL PRINCIPLE

- 6.1 When the Beneficiary is making payments to third parties, programme estimates must be drawn up and adopted beforehand.
- 6.2 The programme estimate is a document laying down the programme of measures to be carried out and the human and material resources required, the corresponding budget and the detailed technical and administrative implementing arrangements for decentralised execution of a project/programme over a specified period by direct labour and/or by means of public procurement and/or the award of grants.
- 6.3. All programme estimates implementing the Financing Agreement must respect the procedures and standard documents laid down by the Commission, in force at the time of the adoption of the programme estimates in question.

ARTICLE 7 - DISBURSEMENT

- 7.1 The Commission shall transfer funds no later than 45 calendar days after the date on which it registers an admissible payment request from the Beneficiary. The payment request is not admissible if at least one essential requirement is not met. The time limit for payments may be suspended by the Commission by

informing the Beneficiary, at any time during the period referred to above, that the payment request can not be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the Commission which puts in doubt the eligibility of expenditure appearing in a payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The Commission shall inform the Beneficiary as soon as possible.

- 7.2 The Commission shall make payments to a bank account opened at a financial institution accepted by the Commission.
- 7.3 The Beneficiary shall guarantee that funds paid by the Commission by way of pre-financing can be identified in this bank account.
- 7.4 Transfers in euro shall, if necessary, be converted into the Beneficiary's national currency as and when payments have to be made by the Beneficiary, at the bank rate in force on the day of payment by the Beneficiary.
- 7.5 The funds paid by the Commission to this bank account shall yield interest or equivalent benefits. The Beneficiary shall notify the Commission of interest or equivalent benefits yielded by those funds at least once a year.
- 7.6 Interest or equivalent benefits yielded by the funds paid of more than two hundred fifty thousand euro shall be repaid to the Commission within 45 days of receipt of the Commission's request.
- 7.7 For a programme estimate which has not given rise to any transfer of funds within three years of its signature, the corresponding committed amount shall be cancelled.

TITRE V – AWARD OF CONTRACTS AND GRANTS

ARTICLE 8 – GENERAL PRINCIPLES

- 8.1 All contracts implementing the Financing Agreement must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.
- 8.2 In cases of decentralised contracts, the Beneficiary will inform the Commission when a contractor has been guilty of making false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations.

In such cases, without prejudice to the power of the Commission to impose administrative and financial penalties according to the Financial Regulation applicable to the general budget of the European Union and the corresponding provisions

applicable to the European Development Fund (EDF), financial penalties to contractors mentioned in the provision on "Administrative and Financial Penalties" of the General Conditions of decentralised contracts shall be imposed by the Beneficiary in accordance with its own rules and procedures, following an adversarial procedure and ensuring the right of defence of the contractor.

ARTICLE 9 - DEADLINE FOR THE SIGNATURE OF THE CONTRACTS AND PROGRAMME ESTIMATES IMPLEMENTING THE FINANCING AGREEMENT

- 9.1 The contracts and programme estimates implementing the Financing Agreement shall be signed by both parties within three years of the entry into force of the Financing Agreement. That deadline may not be extended.
- 9.2 The above provision shall not apply to audit and evaluation contracts, which may be signed later, as well as to riders to contracts already signed.
- 9.3 At the end of the three years of the entry into force of the Financing Agreement, any balance for which contracts have not been signed will be cancelled.
- 9.4 The above provision shall not apply to any balance of the contingency reserve.
- 9.5 A contract or programme estimate which has not given rise to any payment within three years of its signature shall be automatically terminated and its funding cancelled.

ARTICLE 10 - ELIGIBILITY

- 10.1 (Applicable to the ACPs) Participation in invitations to tender for works, supply or service contracts and in calls for proposals shall be open on equal terms to all natural and legal persons of the Member States of the EU and of the African, Caribbean and Pacific (ACP) States, and in the specific cases and under the conditions provided in Annex IV to the ACP-EC Partnership Agreement to natural and legal persons of other third countries.

(Applicable to the OCTs) Participation in invitations to tender for works, supply or service contracts and in calls for proposals shall be open on equal terms to all natural and legal persons of the Member States of the EU, of the ACP States and of the overseas countries and territories (OCTs).
- 10.2 Goods and supplies financed by the EDF and necessary for the performance of works, supply and service contracts and procurement procedures launched by the grant beneficiaries for the execution of the action financed must originate in countries eligible to participate on the terms laid down in the previous paragraph, (applicable to the ACPs) except in the specific cases provided in Annex IV to the ACP-EC Partnership Agreement. In this context, the definition of the concept of "originating products" shall be assessed by reference to the relevant international agreements, and supplies originating in the EU shall include supplies originating in the OCTs.

ARTICLE 11 - PUBLICATION OF INFORMATION

- 11.1 The Beneficiary undertakes to publish each year in a dedicated and easily accessible place of its internet site the title of each contract financed by the Financing Agreement, the name and nationality of the grant beneficiary or successful tenderer as well as the amount of the corresponding grant or contract.
- 11.2. If such internet publication is impossible, the information shall be published by any other appropriate means, including the official journal of the Beneficiary. Publication shall take place during the first half of the year following the closure of the year in respect of which the contracts and grants were awarded by the Beneficiary. The Beneficiary shall communicate to the Commission the address of the place of publication and reference shall be made to this address in the dedicated place of the internet site of the Commission. If the information is published otherwise, the Beneficiary shall give the Commission full details of the means used.

TITLE VI - RULES APPLICABLE TO THE PERFORMANCE OF CONTRACTS

ARTICLE 12 - ESTABLISHMENT AND RIGHT OF RESIDENCE

- 12.1 Where justified by the nature of the contract, natural and legal persons participating in invitations to tender for works, supply or service contracts shall enjoy a provisional right of establishment and residence in the Beneficiary's territory(ies). This right shall remain valid for one month after the contract is awarded.
- 12.2 Contractors (including the grant beneficiaries) and natural persons whose services are required for the performance of the contract and members of their family shall enjoy similar rights during the implementation of the project/programme.

ARTICLE 13 - TAX AND CUSTOMS PROVISIONS

- 13.1 The Beneficiary shall apply to procurement contracts and grants financed by the EDF the most-favoured tax and customs arrangements applied to States or international development organisations with which it has relations. For the purpose of determining the most-favoured-State treatment, account shall not be taken of arrangements applied by the Beneficiary to the other ACP States or to other developing countries.
- 13.2 Where a Framework Agreement is applicable, which includes more detailed provisions on this subject, these provisions shall apply as well.

ARTICLE 14 - FOREIGN EXCHANGE ARRANGEMENTS

- 14.1 The Beneficiary undertakes to authorise the import or purchase of the foreign currency necessary for the implementation of the project. It also undertakes to apply its national foreign exchange regulations in a non-discriminatory manner to the contractors allowed to participate referred to in Article 10 of these General Conditions.
- 14.2 Where a Framework Agreement is applicable, which includes more detailed provisions on this subject, these provisions shall apply as well.

ARTICLE 15 – USE OF DATA FROM STUDIES

Where the Financing Agreement involves the financing of a study, the contract related to this study, signed for the implementation of the Financing Agreement, shall govern the ownership of that study and shall include the right for the Beneficiary and the Commission to use data in the study, to publish it or to disclose it to third parties.

ARTICLE 16 - ALLOCATIONS OF AMOUNTS RECOVERED UNDER CONTRACTS

Amounts recovered from payments wrongly effected, from financial guarantees lodged on the basis of procedures of award of contracts or under a contract financed under this Financing Agreement, as well as from financial penalties imposed by the Beneficiary on candidate, tenderer, contractor or grant beneficiary, shall be allocated to this project/programme. The damages granted to the Beneficiary shall also be allocated to this project/programme.

ARTICLE 17 - FINANCIAL CLAIMS UNDER CONTRACTS

The Beneficiary undertakes to confer with the Commission before taking any decision concerning a request for compensation made by a contractor and considered by the Beneficiary to be justified in whole or in part. The financial consequences may be borne by the EDF only where the Commission has given its prior approval. Such prior approval is also required for any use of funds committed under the present Financing Agreement to cover costs arising from disputes relating to contracts.

TITLE VII - GENERAL AND FINAL PROVISIONS

ARTICLE 18 – VISIBILITY

- 18.1 Every project/programme financed by the EDF shall be the subject of appropriate communication and information operations. These operations shall be defined under the responsibility of the Beneficiary with the approval of the Commission.
- 18.2 These communication and information operations must follow the rules laid down and published by the Commission for the visibility of external operations in force at the time of the operations.
- 18.3 In order to comply with international agreements on Aid Transparency and implement the 2008 Accra Agenda for Action, the content of this Financing Agreement and its annexes may be published.

ARTICLE 19 – PREVENTION OF IRREGULARITIES, FRAUD AND CORRUPTION

- 19.1 The Beneficiary undertakes to check regularly that the operations financed with the EDF funds have been properly implemented. It shall take appropriate measures to prevent irregularities and fraud and, if necessary, bring prosecutions to recover funds wrongly paid.
- 19.2 "Irregularity" shall mean any infringement of the Financing Agreement, implementing contracts and programme estimates or of EU law resulting from

an act or omission by an economic operator, which has, or would have, the effect of prejudicing the EDF or the general budget of the EU, either by reducing or losing revenue accruing from own resources collected directly on behalf of the EU, or by an unjustified item of expenditure.

"Fraud" shall mean any intentional act or omission concerning:

- the use or presentation of false, incorrect or incomplete, statements or documents which has as its effect the misappropriation or wrongful retention of funds from the EDF or the general budget of the EU;
- non-disclosure of information in violation of a specific obligation, with the same effect;
- the misapplication of such funds for purposes other than those for which they are originally granted.

19.3 The Beneficiary shall immediately inform the Commission of any element brought to its attention which arouses suspicions of irregularities or fraud and of any measure taken to deal with them.

19.4 The Beneficiary shall immediately inform the Commission of the name of the economic operators whom have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the EU's financial interests.

19.5 The Beneficiary undertakes to take every appropriate measure to remedy any practices of active or passive corruption whatsoever at any stage of the procedure for the award of contracts or grants or in the implementation of the related contracts. "Passive corruption" shall mean the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the EU's financial interests. "Active corruption" shall mean the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official, for himself or for a third party, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the EU's financial interests.

ARTICLE 20 - VERIFICATIONS AND CHECKS BY THE COMMISSION, THE EUROPEAN ANTI-FRAUD OFFICE (OLAF) AND THE EUROPEAN COURT OF AUDITORS

20.1 The Beneficiary agrees to the Commission, OLAF and the European Court of Auditors conducting documentary and on-the-spot checks on the use made of EDF funding under the Financing Agreement (including procedures for the award of contracts and grants) and carrying out a full audit, if necessary, on the basis of supporting documents of accounts and accounting documents and

any other documents relating to the financing of the project/programme, throughout the duration of the agreement and for seven years after the date of the last payment.

- 20.2 The Beneficiary also agrees that OLAF may carry out on-the-spot checks and verifications in accordance with the procedures laid down by EU law for the protection of the EU's financial interests against fraud and other irregularities.
- 20.3 To that end, the Beneficiary undertakes to grant officials of the Commission, OLAF and the European Court of Auditors and their authorised agents access to sites and premises at which operations financed under the Financing Agreement are carried out, including their computer systems, and to any documents and computerised data concerning the technical and financial management of those operations, and to take every appropriate measure to facilitate their work. Access by authorised agents of the Commission, OLAF and the European Court of Auditors shall be granted on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject. Documents must be accessible and filed in a manner permitting easy inspection, the Beneficiary being bound to inform the Commission, OLAF or the European Court of Auditors of the exact location at which they are kept.
- 20.4 The checks and audits described above shall also apply to contractors and subcontractors who have received EDF funding.
- 20.5 The Beneficiary shall be notified of on-the-spot missions by agents appointed by the Commission, OLAF or the European Court of Auditors.

ARTICLE 21 – CONSULTATION BETWEEN THE COMMISSION AND THE BENEFICIARY

- 21.1 The Beneficiary and the Commission shall consult each other before taking any dispute relating to the implementation or interpretation of this Financing Agreement further, in accordance, where appropriate, with the relevant provisions of the ACP-EC Partnership Agreement.
- 21.2 Where the Commission becomes aware of problems in carrying out procedures relating to management of EDF resources, it shall establish all necessary contacts with the Beneficiary to remedy the situation and, take any steps that are necessary, including, where the Beneficiary does not, or is unable to, perform the duties incumbent on it, temporarily taking the Beneficiary's place.
- 21.3 The consultation may lead to the amendment, suspension or termination of the Financing Agreement.

ARTICLE 22 – AMENDMENT OF THE FINANCING AGREEMENT

- 22.1 Any amendment to the Special Conditions, Annex II and Annex III to the Financing Agreement shall be made in writing and be the subject of an addendum.

- 22.2 If the request for an amendment comes from the Beneficiary, the latter shall submit that request to the Commission at least three months before the amendment is intended to enter into force, except in cases which are duly substantiated by the Beneficiary and accepted by the Commission.
- 22.3 For technical adjustments, which do not affect the objectives and results of the project/programme and alterations in matters of detail which do not affect the technical solution adopted, and within the limit of the contingencies funds, the Beneficiary shall inform the Commission of the amendment and its justification in writing as soon as possible and apply that amendment.
- 22.4 The use of the contingency reserve is conditional on prior written agreement of the Commission.
- 22.5 The specific cases of the extension of the operational implementation phase or of the closure phase are governed by Article 4 (4) and (5) of these General Conditions.
- 22.6 If the Beneficiary ceases to satisfy the decentralisation criteria laid down, where relevant, in the Special Conditions and without prejudice to Articles 23 and 24 of these General Conditions, the Commission may decide to retake the financial implementation tasks entrusted to the Beneficiary in order to continue the implementation of the project/programme on behalf, and for the account, of the Beneficiary, after informing the later in written form.

ARTICLE 23 – SUSPENSION OF THE FINANCING AGREEMENT

- 23.1 The Financing Agreement may be suspended in the following cases:
- The Commission may suspend the implementation of the Financing Agreement if the Beneficiary breaches an obligation under the Financing Agreement, and notably if it ceases to satisfy the decentralisation criteria laid down, where relevant, in the Special Conditions.
 - The Commission may suspend the Financing Agreement if the Beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.
 - The Financing Agreement may be suspended in cases of force majeure, as defined below. "Force majeure" shall mean any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations, is not attributable to error or negligence on their part (or the part of their contractors, agents or employees) and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as force majeure. A party shall not be held in breach of its obligations if it is prevented from fulfilling them by a case of force majeure of which the other party is duly informed. A party faced with force majeure shall inform the other party without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage.
- 23.2 No prior notice shall be given of the suspension decision.

- 23.3 As a precautionary measure, payments referred to in Article 7 (1) of these General Conditions shall be suspended.
- 23.4 When the suspension is notified, the consequences on the ongoing contracts and programme estimates or contracts and programme estimates to be signed will be indicated.
- 23.5 A suspension of the Financing Agreement is without prejudice to the suspension of payments by the Commission for the sake of ensuring sound financial management or protecting the EU's financial interests.

ARTICLE 24 – TERMINATION OF THE FINANCING AGREEMENT

- 24.1. If the issues which led to the suspension of the Financing Agreement have not been resolved within a maximum period of four months, either party may terminate the Financing Agreement at two months' notice.
- 24.2. Where a Financing Agreement has not given rise to any payment within three years of its signature or no implementing contract or programme estimates has been signed within this period, that Financing Agreement will be terminated.
- 24.3 When the termination is notified, the consequences on the ongoing contracts and programme estimates or contracts and programme estimates to be signed will be indicated.

ARTICLE 25 - DISPUTE-SETTLEMENT ARRANGEMENTS

- 25.1 (*Applicable to the ACPs*) Any dispute concerning the Financing Agreement which cannot be settled within a six-month period by the consultations between the Commission and the Beneficiary provided for in Article 21 of these General Conditions shall be submitted to the ACP-EC Council of Ministers. Between meetings of the ACP-EC Council of Ministers, such disputes shall be submitted to the ACP-EC Committee of Ambassadors. If the ACP-EC Council of Ministers or where appropriate the ACP-EC Committee of Ambassadors does not succeed in settling the dispute, either party may request settlement of the dispute by arbitration.

(*Applicable to the OCTs*) Any dispute concerning the Financing Agreement which cannot be settled within a six-month period by the consultations between the Commission and the Beneficiary provided for in Article 21 of these General Conditions may be settled by arbitration at one of the parties' request.

- 25.2 In this case the parties shall designate an arbitrator within 30 days of the request for arbitration. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration (The Hague) to designate a second arbitrator. The two arbitrators shall in their turn designate a third arbitrator within 30 days. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration to designate the third arbitrator.
- 25.3 Unless the arbitrators decide otherwise, the procedure laid down in the Permanent Court of Arbitration Optional Rules for Arbitration Involving

International Organisations and States shall apply. The arbitrators' decisions shall be taken by a majority within a period of three months.

- 25.4 Each party shall be bound to take the measures necessary for the application of the arbitrators' decision.