

ORIGINAL

Agreement No. FED/2016/038-869

FINANCING AGREEMENT

between

THE EUROPEAN UNION

and

THE REPUBLIC OF NAURU

***"Support to Energy Efficiency and Renewable Energy in the Republic
of Nauru"***



FINANCING AGREEMENT

SPECIAL CONDITIONS

The European Commission, hereinafter referred to as "**the Commission**", acting on behalf of the European Union, hereinafter referred to as "**the EU**",

of the one part, and

The Republic of Nauru represented by the National Authorising Officer, hereinafter referred to as "**the Partner Country**",

of the other part,

have agreed as follows:

Article 1 - Nature of the action

1.1. The EU agrees to finance and the Partner Country agrees to accept the financing of the following action:

Support to Energy Efficiency and Renewable Energy in the Republic of Nauru
CRIS decision number: FED/2016/038-869

This action is financed from the 11th European Development Fund under the following basic act: ACP-EU Partnership Agreement.

1.2. The total estimated cost of this action is EUR 2 400 000 and the maximum EU contribution to this action is set at EUR 2 400 000.

1.3. The Partner Country shall not co-finance the action.

Article 2 – Execution period

2.1. The execution period of this Financing Agreement as defined in Article 15 of Annex II (General Conditions) shall commence on the entry into force of this Financing Agreement and end 72 months after this date.

2.2. The duration of the operational implementation phase is fixed at 48 months.

2.3. The duration of the closure phase is fixed at 24 months.

Article 3 – Addresses

All communications concerning the implementation of this Financing Agreement shall be in writing, shall refer expressly to this action as identified in Article 1.1 of these Special Conditions and shall be sent to the following addresses:

a) **for the Commission**

Delegation of the European Union for the Pacific
Level 6, Tappoo City Complex
Corner of Scott & Usher Street
Private Mail Bag, Suva
Fiji

b) **for the Partner Country**

The National Authorising Officer
The Minister for Finance
Ministry of Finance
Government Offices, Yaren District
Republic of Nauru

Article 4 – OLAF contact point

The contact point of the Partner Country having the appropriate powers to cooperate directly with the European Anti-Fraud Office (OLAF) in order to facilitate OLAF's operational activities shall be:

The National Authorising Officer
The Minister for Finance
Ministry of Finance
Government Offices, Yaren District
Republic of Nauru

Article 5 - Annexes

5.1. This Financing Agreement is composed of:

- (a) these Special Conditions;
- (b) Annex I: Technical and Administrative Provisions, detailing the objectives, expected results, activities, description of the budget-implementation tasks entrusted and budget of this Action;
- (c) Annex II: General Conditions;
- (d) Annex III: Reporting Template – not applicable to and not included in this Financing Agreement;
- (e) Annex IV: Management Declaration Template;

5.2. In the event of a conflict between, on the one hand, the provisions of the Annexes and, on the other hand, the provisions of these Special Conditions, the latter shall take precedence. In the event of a conflict between, on the one hand, the provisions of Annex I (Technical and Administrative Provisions) and, on the other hand, the provisions of Annex II (General Conditions), the latter shall take precedence.

Article 6 – Entry into force

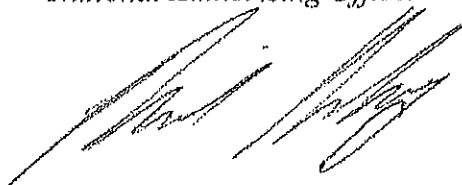
This Financing Agreement shall enter into force on the date on which it is signed by the last party.

Done in three original copies, two copies being handed to the Commission and one to the Partner Country.

For the Partner Country:

Name: Hon. David Adeang
Function: National Authorising Officer

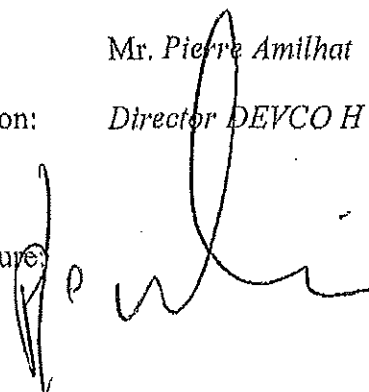
Signature:



For the Commission:

Name: Mr. Pierre Amilhat
Function: Director DEVCO H

Signature:



Place: Suva, Fiji

Date: 16 NOV 2016

Place: Brussels

Date: 28. 10. 2016



ANNEX I TO FINANCING AGREEMENT NO. FED/2016/038-869

TECHNICAL AND ADMINISTRATIVE PROVISIONS

1. Title/basic act/ CRIS number	Support to Energy Efficiency and Renewable Energy in the Republic of Nauru CRIS number: 2016/038-869. financed under European Development Fund			
2. Zone benefiting from the action/location	Pacific Region, Republic of Nauru. The action shall be carried out at the following location: Republic of Nauru			
3. Programming document	11th European Development Fund (EDF), National Indicative Programme 2014-2020 for the Republic of Nauru			
4. Sector of concentration/ thematic area	Energy Efficiency and Renewable Energy			
5. Amounts concerned	Total estimated cost: EUR 2 400 000 Total amount of EDF: EUR 2 400 000 No co-financing is foreseen under this action.			
6. Aid modality(ies) and implementation modality(ies)	Project Modality Indirect Management with the Republic of Nauru. Direct management for audit and evaluation			
7. DAC code(s)	23040,023081			
8. Markers (from CRIS DAC form)	General policy objective	Not targeted	Significant objective	Main objective
	Participation development/good governance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Aid to environment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Gender equality (including Women In Development)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Trade Development	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Reproductive, Maternal, New born and child health	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	RIO Convention markers	Not targeted	Significant objective	Main objective
	Biological diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Combat desertification	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Climate change mitigation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Climate change adaptation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

SUMMARY

This action meets the needs of the Republic of Nauru as identified in the National Indicative Programme 2014-2020 which maintains energy as the focal sector and is consistent with the country priorities and policies as set out in the National Sustainable Development Strategy and the Nauru Energy Road Map (NERM).

The programme aims at providing reliable, efficient and affordable electricity supply as well as diversifying the generation base. The allocation to the Component 1, Focal Sector Energy Efficiency and Renewable Energy, for an amount of EUR 2 080 000, is proposed to be contracted through supply contracts under the specific component of the Programme estimate for the rehabilitation and extension of the transmission network and rehabilitation of the distribution network, as well as the installation of a solar plant for renewable energy generation . These infrastructure investments will improve the security of supply, enhance energy efficiency and renewable energy and would further reduce dependence on imported fossil fuel for electricity generation. The support to the NAO will also be provided through the same Programme estimate under the imprest component which will comprise a technical assistance component to improve the institutional framework, strengthen project planning, implementation and visibility through support measures amounting to EUR 240 000. EUR 80 000 will be used for audit and evaluation undertaken by the Commission.

1 DESCRIPTION OF THE ACTION

1.1 Objectives/results

This programme is relevant for the Agenda 2030. It contributes primarily to the progressive achievement of Sustainable Development Goal (SDG) target 7 Ensure access to affordable, reliable, sustainable, and modern energy for all, but also promotes progress towards Goal 13 - Take urgent action to combat climate change and its impacts. This does not imply a commitment by the Republic of Nauru benefiting from this programme. The overall and specific objectives of the Action are in line with the NERM 2014-2020.

Overall Objective

To provide a reliable, affordable, secure and sustainable energy supply to meet the socio economic development needs of Nauru.

Specific objectives

The specific objectives of this action are:

1. Increase the reliability and efficiency of the electric network in Nauru
2. Increase renewable energy generation in Nauru

The action aims to fulfil these objectives by achieving the following results:

- Reduce power outages measured through System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI)¹
- Reduce technical and non-technical energy losses
- Increase renewable energy generation

1.2 Main activities

The main activities under this action are:

Under component 1 – Focal Sector Energy Efficiency and Renewable Energy²

- a. *Complete the replacement/upgrading of the national grid transmission and distribution network.*

A total of 15 km of the high voltage (HV) overhead transmission line has been successfully replaced under the 10th EDF. To complete the rehabilitation of the HV network throughout Nauru, 8km of HV transmission lines shall be rehabilitated. In addition 5km of low voltage (LV) distribution network shall also be rehabilitated. This will include design, purchase of the hardware and installation of the system.

- b. *Construction of 8 km of new 11 kV line across the island.*

The construction of this line will replace a section of a line that will be decommissioned as it is at the end of its life, it will also be extended to improve the security of the grid and an alternative connection to the grid of the proposed installation and for future renewable energy sources on land that has been purchased for renewable installations.

- c. *Installation of renewable energy generation plant*

Installation of a solar panel plant of approximately 300 KW is expected to produce an average of 525,600 kWh per annum and reduce greenhouse gas emissions (CO₂, SO_x, NO_x). The installation shall be located adjacent to the UAE 500 KW solar installation site. The activity also includes a feasibility study prior to the installation of the solar energy plant. The recommendations of the feasibility may affect the size of the plant and/or the need to carry out additional or alternative activities.

- d. *Human resources capacity building for NUC staff*

Improving capacity for implementation and maintenance of transmission and distribution (T&D) lines of the NUC staff. NUC intends to train personnel in the area of T&D maintenance in accordance with AS/NZ standards. Personnel are also intended to be trained in the area of generation efficiency and maintenance of solar plants.

Under component 2 – Support Measures

¹ These indicators will be captured through the energy performance and monitoring system implemented by the NUC which are published in its Annual report.

² Specifications will be developed at the level of contracting to avoid early corrosion and deterioration of equipment and materials.

Support measures under the programme estimate will be implemented notably through the following, non-exhaustive set of activities:

- a. Provide long-term, medium-term and short-term technical assistance to support the NAO and/or relevant offices/agencies for the whole EDF life-cycle or other EU instruments, including programming of the next cooperation cycle.
- b. Support the organisation and/or participation for conferences/seminars in ACP and/or EU countries on relevant EU cooperation issues, including public finance management, for key Nauru stakeholders.
- c. Day-to-day administration of the NIP in conjunction with the NAO.
- d. Undertake sector studies aimed at focusing EU/EDF policy in Nauru.
- e. Coordinate, attend and service meetings as required such as PSC meetings, EU missions, Results-Oriented Monitoring (ROM).
- f. Attend to information requirements of the EU Delegation and EU Member States.
- g. Provide short-term training on Public Finance Management (PFM), development and trade issues to relevant Nauru key stakeholders in particular to Ministry of Finance and Economic Planning staff.
- h. Training of staff within the Planning and Aid Division (PAD) of the Ministry of Finance and Economic Planning and relevant stakeholders, including civil society organisations in EDF rules and procedures and Project Cycle Management.
- i. Provide technical assistance to monitor and strengthen PFM systems and address key issues of the PFM strategy for Nauru in close coordination with development partners and the Ministry of Finance and Economic Planning.
- j. Procure necessary equipment and related items that will improve working conditions and will support the present programme and other EU-funded actions including the focal area programme.
- k. Provide technical assistance to support communication and visibility activities for new and ongoing projects/programmes.

1.3 Intervention logic

The execution of this program shall significantly improve the reliability, security and reach of the electricity grid in Nauru. The Action is in line with the NERM and support from the government to the NERM is expected to be maintained. Collaboration with the NAO and the NUC for the implementation of the action is also an assumption. The support measures provided through this action will provide the Technical assistance and the capacity building needed for a good implementation and maintenance of the project to ensure sustainability of the action

As a result of this action, through the rehabilitation and extension of the electricity lines and the installation of the solar plant subsequent to the completion of its feasibility study, it is expected to increase the reliability and efficiency of the electric network and renewable energy generation in Nauru, contributing to the overall objective to provide reliable, secure and sustainable energy supply to meet the socio economics development needs of Nauru.

Population from Nauru will benefit from access to reliable, sustainable and modern energy thanks to this action. The environmental impact caused by fossil fuel will be reduced with the increased efficiency (reduction in losses) and displacement of fossil fuel generation by renewable generation of energy. This will improve the quality of air especially around the power station.

The construction of a new line through the island will also enable the connection of new demand to the grid enabling increased revenue for the NUC making it more sustainable. This will also enable the connection of larger renewable sources to the grid to replace fossil fuel generation.

2 IMPLEMENTATION

2.1 Implementation modalities

This action will be implemented through the following implementing modality:

Indirect management with the Republic of Nauru

This action with the objectives of *increasing the reliability and efficiency of the electric network and renewable energy generation* may be implemented in indirect management with the Republic of Nauru in accordance with Article 58(1)(c) of the Regulation (EU, Euratom) No 966/2012 applicable by virtue of Article 17 of the Regulation (EU) No 2015/322 according to the following modalities:

The Republic of Nauru will act as the contracting authority for the procurement and grant procedures.

The Commission will control *ex ante* all the procurement procedures except in cases where programme estimates are applied, under which the Commission applies *ex ante* control for procurement contracts above EUR 100,000 (or lower, based on a risk assessment) and may apply *ex post* control for procurement contracts up to that threshold. The Commission will control *ex ante* the grant procedures for all grant contracts.

Payments are executed by the Commission except in cases where programmes estimates are applied, under which payments are executed by the Republic of Nauru for ordinary operating costs, direct labour and contracts below EUR 300,000 for procurement and up to EUR 100,000 for grants.

The financial contribution partially covers, for an amount of EUR 40 000, the ordinary operating costs incurred under the programme estimates.

In accordance with Article 190(2)(b) of Regulation (EU, Euratom) No 966/2012 and Article 262(3) of Delegated Regulation (EU) No 1268/2012 applicable by virtue of Article 36 of the Regulation (EU) 323/2015 and Article 19c(1) of Annex IV to the ACP-EU Partnership Agreement, the Republic of Nauru shall apply procurement rules of Chapter 3 of Title IV of Part Two of Regulation (EU, Euratom) No 966/2012. These rules, as well as rules on grant procedures in accordance with Article 193 of Regulation (EU, Euratom) No 966/2012 applicable by virtue of Article 17 of the Regulation (EU) No 323/2015, will be laid down in the financing agreement concluded with the Republic of Nauru.

a) Overview of implementation

Activity/objective/result, include location	Type of financing (works, supplies, or service contract, grant, programme estimate)
<u>Component 1 – Focal Sector Energy Efficiency and Renewable Energy (specific component)</u>	Programme estimate
<u>Component 2 – Support Measures (imprest component)</u>	

b) Implementation through programme estimates

The contracting authority for these activities shall be the National Authorising Officer of Nauru.

An imprest administrator and an imprest accounting officer, and their deputies, shall be appointed for the management and implementation of the programme estimate by the contracting authority, in agreement with the Head of Delegation.

In accordance with the powers delegated to them by the partner country authority that appointed them, the imprest administrator and the imprest accounting officer shall draw up and implement programme estimates, award contracts and grants, commit expenditure and make the corresponding payments.

The imprest administrator and the imprest accounting officer shall submit their technical and financial reports to the project steering committee, where applicable, and to the National Authorising Officer and a copy to the Head of the EU Delegation.

2.2 Scope of geographical eligibility for procurement and grants

The geographical eligibility in terms of place of establishment for participating in procurement and grant award procedures and in terms of origin of supplies purchased as established in the basic act and set out in the relevant contractual documents shall apply, subject to the following provisions.

In accordance with Article 22(1)(a) of Annex IV to the ACP-EU Partnership Agreement; the Commission decides that natural and legal persons from the following countries having traditional economic, trade or geographical links with neighbouring partner countries shall be eligible for participating in procurement and grant award procedures: Australia and New Zealand. The supplies originating there shall also be eligible.

The Commission's authorising officer responsible may extend the geographical eligibility in accordance with Article 22(1)(b) of Annex IV to the ACP-EU Partnership Agreement on the basis of urgency or of unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where the eligibility rules would make the realisation of this action impossible or exceedingly difficult.

2.3 Indicative budget

	EU contribution (amount in EUR)	Indicative third party contribution in EUR
5.4. Indirect management with the Republic of Nauru. Programme estimate .		
Component 1– Focal Sector Energy Efficiency and Renewable Energy (Specific component)	2 080 000	0
Component 2– Support Measures (Imprest component)	240 000	0
2.6 – Evaluation, 2.7 - Audit	80 000	0
Total	2 400 000	0

2.4 Organisational set-up and responsibilities

The contracting authority for the project shall be the National Authorising Officer (NAO) of the Republic of Nauru. The main counterpart for all communication pertaining to the action will be the NAO and the Deputy NAO of the Republic of Nauru. However, the overall responsibility for the implementation of the programme lies with the NAO of the Republic of Nauru.

The project will be implemented by the Nauru Utilities Corporation for component 1. The Technical Assistance's will assist the Beneficiary in the implementation of the project. The NAO's office and NUC will be assisted by long-term and short-term technical assistance for project management and specific technical expertise in electrical engineering and energy efficiency.

The TA to the NAO will report to the NAO and the European Commission Delegation for the Pacific.

The National Authorising Officer, in agreement with the Head of Delegation, shall assign an imprest administrator and an imprest accounting officer from the Department of Economic Planning & Development to carry out the management and implementation of the project.

2.5 Performance monitoring and reporting

The day-to-day technical and financial monitoring of the implementation of this action will be a continuous process and part of the implementing partner's responsibilities. To this aim, the implementing partner shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular progress reports (not less than annual) and final reports. Every report shall provide an accurate account of implementation of the action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (outputs and direct outcomes) as measured by corresponding indicators, using as reference the logframe matrix (for project modality) or the list of result indicators (for budget support). The report shall be laid out in such a way as to allow monitoring of the means

envisaged and employed and of the budget details for the action. The final report, narrative and financial, will cover the entire period of the action implementation.

The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

2.6 Evaluation

Having regard to the nature of the action, a final evaluation will be carried out for this action or its components via independent consultants contracted by the Commission.

It will be carried out for accountability and learning purposes at various levels (including for policy revision).

The Commission shall inform the implementing partner at least 1 month in advance of the dates foreseen for the evaluation missions. The implementing partner shall collaborate efficiently and effectively with the evaluation experts, and *inter alia* provide them with all necessary information and documentation, as well as access to the project premises and activities.

The Commission shall inform the implementing partner at least 2 months in advance of the dates foreseen for the evaluation missions. The implementing partner shall collaborate efficiently and effectively with the evaluation experts, and *inter alia* provide them with all necessary information and documentation, as well as access to the project premises and activities.

The evaluation reports shall be shared with the partner country and other key stakeholders. The implementing partner and the Commission shall analyse the conclusions and recommendations of the evaluations and, where appropriate, in agreement with the partner country, jointly decide on the follow-up actions to be taken and any adjustments necessary, including, if indicated, the reorientation of the project.

Indicatively, one (1) contract for evaluation services shall be concluded under a framework contract in the execution period.

2.7 Audit

Without prejudice to the obligations applicable to contracts concluded for the implementation of this action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments for one or several contracts or agreements.

Indicatively, one (1) contract for audit services shall be concluded under a framework contract in the execution period.

2.8 Communication and visibility

Communication and visibility of the EU is a legal obligation for all external actions funded by the EU.

This action shall contain communication and visibility measures which shall be based on a specific Communication and Visibility Plan of the Action, to be elaborated at the start of implementation and supported with the budget indicated in section 2.3 above.

In terms of legal obligations on communication and visibility, the measures shall be implemented by the Commission, the partner country, contractors, grant beneficiaries and/or entrusted entities. Appropriate contractual obligations shall be included in, respectively, the financing agreement, procurement and grant contracts, and delegation agreements.

The Communication and Visibility Manual for European Union External Action shall be used to establish the Communication and Visibility Plan of the Action and the appropriate contractual obligations.

APPENDIX - INDICATIVE LOGFRAME MATRIX (FOR PROJECT MODALITY)

The activities, the expected outputs and all the indicators, targets and baselines included in the logframe matrix are indicative and may be updated during the implementation of the action without an amendment to the financing decision. The indicative logframe matrix will evolve during the lifetime of the action: new lines will be added for listing the activities as well as new columns for intermediary targets (milestones) when it is relevant and for reporting purpose on the achievement of results as measured by indicators.

Intervention Logic	Indicators	Baselines (incl. reference year)	Targets (incl. reference year)	Sources and means of verification	Assumptions
Overall objective: Impact	To provide a reliable, affordable, secure and sustainable energy supply to meet the socio economic development needs of Nauru	OO-11: - The status of access to reliable electricity source OO-12: - Diesel used at power station	OO-11T: Nauru has access to reliable and uninterrupted source of electricity OO-12T: Reduction of diesel usage by -600,000 litres (2020)	OO-11S: Government statistics OO-12S: Nauru Utilities Corporation Annual Report	Support from the Government is maintained for the implementation of the NERM
Specific objective:	SO1 - Increase the reliability and efficiency of the electric network in Nauru SO2 - Increase renewable energy generation in Nauru	SO1-11: - Reliability of the power network i.e. SAIDI, SAIFI (*) SO1-12: - Total system loss on the grid (**) SO2-11: - Share of renewable energy generation	SO1-11T: Less than 10 outage events/customer (2020) SO1-12T: 10% (2020) SO2-11T: 4 % (2020)	Nauru Utilities Corporation Annual Report	Support from the government the NAO and the NUC is maintained for the implementation of the action
Output	O1: - Transmission and Distribution network rehabilitated and new Transmission network installed O2: - Grid-connected	O1-11: - Electrical lines rehabilitated/installed (**) O2-11: - kWp installed and	O1-11T: - 23km HV rehabilitated - 5 km LV rehabilitated - 8 Km new HV installed O2-11T:	O-11S: - Project progress reports O2-11S:	- Weather permits installations without delay.

Intervention Logic	Indicators	Baselines (end reference year)	Targets (end reference year)	Sources and means of verification	Assumptions
renewable energy plant installed and operational	operational (**)	0 kWp is installed (2014)	300 kWp installed and operational (2020)	- NUC Annual Report	- Land allocation and preparation for solar installation is confirmed
O3: - NUC and NAO staff trained and accredited	O3-I1:- Status of certification of NUC staff on installation / maintenance of equipment	O3-I1B: 0% staff trained on installation / maintenance of equipment (2015)	O3-I1T: 40% staff trained on installation / maintenance of equipment (2020)	O3-I1S: - NUC Annual Report	
	O3-I2:- Status of certification of NAO staff on EU procedures / PFM training	O3-I2B: 20% staff trained in PFM / EU procedures (2015)	O3-I2T: 40% staff trained in PFM / EU procedures (2020)	O3-I2S: NAO records	Cooperation with NAO and NUC is maintained

ANNEX II - GENERAL CONDITIONS

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Part One: Provisions Applicable to Activities for which the Partner Country is the Contracting Authority

Article 1 - General principles

1.1 The purpose of Part One is to define the tasks entrusted to the Partner Country in indirect management as described in Annex I (Technical and Administrative Provisions) and to define the rights and obligations of the Partner Country and of the Commission in carrying out these tasks.

Part One shall apply to the tasks related to the EU contribution alone or in combination with the funds of the Partner Country or of a third party where such funds are implemented in joint co-financing, i.e. where they are pooled.

These tasks encompass the implementation by the Partner Country as contracting authority of procurement and grant award procedures, and the awarding, signing and enforcing the resulting procurement and grant contracts.

The designation of entities pertaining to the Partner Country's government or administrative structure and identified in Annex I (Technical and Administrative Provisions) to carry out certain tasks, does not qualify as sub-delegation. Such entities shall respect the rights and obligations laid down in Part One for the Partner Country as contracting authorities, while at the same time the Partner Country remains fully responsible for the fulfilment of the obligations stipulated in this Financing Agreement. References in the Financing Agreement to Partner Country also encompass those entities.

As contracting authority, the Partner Country shall act under Partial delegation, unless it acts under the Imprest component of a programme estimate or under a Partner Country managed Pool fund:

- Under Partial delegation, the Partner Country acts as contracting authority for procurement contracts and grant contracts, whereby the Commission controls ex ante all award procedures and executes all related payments to the contractors and grant beneficiaries;
- Under the Imprest component of a programme estimate, the Partner Country acts as contracting authority for procurement and grant contracts, whereby it may, up to established thresholds, conduct procurement and grant award procedures without or with limited ex ante control of the Commission and execute payments to the contractors and grant beneficiaries, as well as in the context of direct labour.
- Under a Partner Country managed Pool fund, the Partner Country acts as contracting authority for procurement contracts and grant contracts, whereby the Commission does not control ex ante any award procedure and the Partner Country executes all related payments to the contractors and grant beneficiaries.

Where the Partner Country is an ACP State and the action is financed by the EDF pursuant to

Article 1.1 of the Special Conditions, the tasks entrusted shall be those listed in points (c) to (k) of the sixth subparagraph of Article 35(1) and in Article 35(2) of Annex IV to the ACP-EC Partnership Agreement

Where the Partner Country is an OCT and the action is financed by the EDF pursuant to Article 1.1 of the Special Conditions, the implementation of tasks entrusted shall also respect the conditions of Article 86(3) of Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision).

- 1.2 The Partner Country shall remain responsible for the fulfilment of the obligations stipulated in this Financing Agreement even if it designates other entities identified in Annex I (Technical and Administrative Provisions) to carry out certain tasks. The Commission, in particular, reserves the right to suspend payments, and to suspend and/or terminate this Financing Agreement on the basis of the acts, omissions and/or situations of any designated entity.
- 1.3 The Partner Country shall set up and ensure the functioning of an effective and efficient internal control system. The Partner Country shall respect the principles of sound financial management, transparency and non-discrimination and avoid situations of conflict of interest.

A conflict of interest exists where the impartial and objective exercise of the functions of any responsible person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a tenderer or applicant, or contractor or grant beneficiary.

Internal control system is a process aimed at providing reasonable assurance that operations are effective, efficient and economical, that the reporting is reliable, that assets and information are safeguarded, that fraud and irregularities are prevented, detected and corrected, and that risks relating to the legality and regularity of the financial operation are adequately managed, taking into account the multiannual character of the activities as well as the nature of the payments concerned.

In particular, where the Partner Country carries out payments under the Imprest component of a programme estimate or in the framework of a Pool Fund managed by the Partner Country, the functions of the authorising and accounting officers shall be segregated and mutually incompatible and the Partner Country shall operate an accounting system that provides accurate, complete, reliable and timely information.

- 1.4 Outside the cases where the Partner Country applies its own (including in the case of a Pool Fund, those agreed upon by the Pool Fund's donors) procedures and standard documents for the award of procurement contracts and grant contracts, the Partner Country shall conduct the award procedures and conclude the resulting contracts and agreements in the language of this Financing Agreement.
- 1.5 The Partner Country shall take the necessary measures to ensure the visibility of EU funding for the activities entrusted to it or for other activities under this action. These measures shall either be defined in Annex I (Technical and Administrative Provisions) or shall be agreed later

between the Partner Country and the Commission.

These communication and information measures shall comply with the Communications and Visibility Manual for EU External Actions laid down and published by the Commission, in force at the time of the measures.

- 1.6 Under Partial delegation and under the Imprest component of a programme estimate, the Partner Country shall keep all relevant financial and contractual supporting documents from the date of the entry into force of this Financing Agreement or as from an earlier date which is stipulated as the start date of cost eligibility in Article 6 of the Special Conditions for five years as from the end of the execution period, in particular, the following:

Procurement procedures:

- a. Forecast notice with proof of publication of the procurement notice and any corrigenda
- b. Appointment of shortlist panel
- c. Shortlist report (incl. annexes) and applications
- d. Proof of publication of the shortlist notice
- e. Letters to non-shortlisted candidates
- f. Invitation to tender or equivalent
- g. Tender dossier including annexes, clarifications, minutes of the meetings, proof of publication
- h. Appointment of the evaluation committee
- i. Tender opening report, including annexes
- j. Evaluation / negotiation report, including annexes and bids received¹
- k. Notification letter
- l. Supporting documents
- m. Cover letter for submission of contract
- n. Letters to unsuccessful candidates
- o. Award / cancellation notice, including proof of publication
- p. Signed contracts, amendments, riders and relevant correspondence

Calls for proposals and direct award of grants:

- a. Appointment of the evaluation committee
- b. Opening and administrative report including annexes and applications received²
- c. Letters to successful and unsuccessful applicants following concept note evaluation

¹ Elimination of unsuccessful bids five years after the closure of the procurement procedure

² Elimination of unsuccessful applications three years after the closure of the grant procedure.

- d. Concept note evaluation report
- e. Evaluation report of the full application or negotiation report with relevant annexes
- f. Eligibility check and supporting documents
- g. Letters to successful and unsuccessful applicants with approved reserve list following full application evaluation
- h. Cover letter for submission of grant contract
- i. Award/cancellation notice with proof of publication
- j. Signed contracts, amendments, riders and relevant correspondence.

1.7 The Partner Country shall ensure an appropriate protection of personal data. Personal data means any information relating to an identified or identifiable natural person. Any operation involving the processing of personal data, such as collection, recording, organisation, storage, adaption or alteration, retrieval, consultation, use, disclosure, erasure or destruction, shall be based on rules and procedures of the Partner Country and shall only be done as far as it is necessary for the implementation of this Financing Agreement.

In particular, the Partner Country shall take appropriate technical and organisational security measures concerning the risks inherent in any such operation and the nature of the information relating to the natural person concerned, in order to:

- a) Prevent any unauthorised person from gaining access to computer systems performing such operations, and especially unauthorised reading, copying, alteration or removal of storage media; unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored information;
- b) Ensure that authorised users of an IT system performing such operations can access only the information to which their access right refers;
- c) Design its organisational structure in such a way that it meets the above requirements.

Article 2 - Deadline for the signature of contracts and agreements by the Partner Country

2.1 The procurement contracts and grant contracts shall be signed during the operational implementation phase of this Financing Agreement.

When implementing co-financed actions, the procurement contracts and grant contracts shall be concluded within the contracting deadline set out in the Special Conditions or set out for the imprest component of the programme estimate.

When the Action is not co-financed, procurement contracts and grant contracts shall be concluded at the latest within three years of the entry into force of this Financing Agreement.

Additional procurement contracts and grant contracts resulting from an amendment of this Financing Agreement which adds new activities and increases the EU contribution, shall be signed at the latest within three years of the entry into force of that amendment of this Financing Agreement, or for co-financed actions within the fixed contracting deadline.

The three years-deadline for non-cofinanced actions may not be extended, except when the action is financed by the EDF. In such cases, the extension shall be stipulated in Article 6 of the Special Conditions.

- 2.2 However, the following transactions may be signed at any time during the operational implementation phase:
- a. amendments to procurement contracts and grant contracts already signed;
 - b. individual procurement contracts to be concluded after early termination of existing procurement contracts;
 - c. contracts relating to audit and evaluation, which may also be signed during the closure phase;
 - d. operating costs referred to in Article 5.1;
- 2.3 After expiry of the deadlines referred to in Article 2.1, the financial balance for the related activities entrusted to the Partner Country for which contracts have not been duly signed shall be decommitted by the Commission.
- 2.4 No such decommitment shall apply to the funds budgeted for audit and evaluations referred to in Article 2.2.c) or the operating costs referred to in Article 2.2.d).

Likewise, no such decommitment shall apply to any financial balance of the contingency reserve or to funds available again after early termination of a contract referred to in Article 2.2.b), which both may be used to finance contracts referred to in Article 2.2.

Article 3 – Exclusion and administrative sanctions

3.1 Exclusion criteria

3.1.1 When applying the procedures and standard documents laid down and published by the Commission for the award of procurement and grant contracts, the Partner Country shall accordingly ensure:

- that a procurement or grant contract for a given EU financed procurement or grant procedure is not awarded to an economic operator or grant applicant who
 - a) has misrepresented the information required as a condition of participation in the procedure or has failed to supply that information;
 - b) was previously involved in the preparation of procurement documents where this entails a distortion of competition that cannot be remedied otherwise.
- that no EU financed procurement or grant contract is awarded to an economic operator or grant applicant who either itself, or a person having powers of representation, decision making or control over it,
 - a) is bankrupt, subject to insolvency or winding-up procedures or in any analogous situation arising from a similar procedure provided for under national laws or regulations;

- b) is by final judgment or final administrative decision declared to be in breach of its obligations relating to the payment of taxes or social security contributions.
- c) is by final judgment or final administrative decision declared to be guilty of grave professional misconduct;
- d) is by final judgment declared to be guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings;
- e) has shown significant deficiencies in complying with main obligations in the performance of an EU financed contract;
- f) is by final judgment or final administrative decision declared to have committed an irregularity affecting the EU's financial interest.

3.1.2 When applying its own (including, in the case of a Pool Fund, those agreed upon by the Pool Fund's donors) procedures and standard documents for the award of procurement and grant contracts, the Partner Country shall adopt measures, in accordance with its own national legislation, to ensure that no EU financed procurement or grant contract is awarded to an economic operator or grant applicant who is in one of the situations referred to in Article 3.1.1, 1st indent, a), Article 3.1.1, 2nd indent, d) and Article 3.1.1, 2nd indent, f).

The Partner Country may take into account, as appropriate and on its own responsibility, the information contained in the Commission's Early Detection and Exclusion System when awarding procurement and grant contracts. Access to the information can be provided through the liaison point(s) or via consultation to the Commission (European Commission, Directorate-General for Budget, Accounting Officer of the Commission, BRE2-13/505, B-1049 Brussels, Belgium and by email to BUDG-C01-EXCL-DB@ec.europa.eu in copy to the Commission address identified in Article 3 of the Special Conditions). The Commission may refuse payments to a contractor or grant beneficiary in an exclusion situation.

3.2 Information duty

The Partner Country shall inform the Commission when an economic operator or grant applicant is in a situation referred to in Article 3.1, or has committed irregularities and fraud, or has been found in serious breach of its contractual obligations.

3.3 Administrative sanctions

Where the Partner Country becomes aware of one of the situations referred to in Article 3.1 in the implementation of the tasks described in Annex I, the Partner Country shall, under the conditions of its national legislation, impose upon the economic operator or grant applicant, an exclusion from its future procurement or grant award procedures and/or a financial penalty proportional to the value of the contract concerned. Such financial penalties or exclusions shall be imposed following an adversarial procedure ensuring the right of defence of the person concerned.

With respect to the first paragraph, the Partner Country is considered in failure to act, among others, where:

- the Partner Country's national legislation does not allow to impose an exclusion and/or a financial penalty,
- the protection of the EU's financial interests requires to impose an administrative sanction within deadlines incompatible with the Partner Country's internal procedures,
- the imposition of an administrative sanction requires a mobilisation of resources beyond the Partner Country's means,
- its national legislation does not allow to exclude an economic operator from all EU financed award procedures.

In case of such failures, the Partner Country will notify its impediment to the Commission. The Commission may decide to impose an exclusion from future EU financed award procedures and/or a financial penalty between 2 % and 10 % of the total value of the contract concerned.

Article 4 - Partial delegation

Award procedures

- 4.1 The tasks shall be carried out by the Partner Country in accordance with the procedures and standard documents laid down and published by the Commission for the award of procurement contracts and grant contracts, in force at the time of the launch of the procedure in question.

Ex ante control

4.2 To allow ex ante control, the Partner Country shall submit tender dossiers and documents for calls for proposals, to the Commission for approval before launching invitations to tender and calls for proposals. Likewise, the Partner Country shall invite the Commission to the opening of tenders and proposals, and shall provide the Commission with copies of tenders and proposals received. The Partner Country shall notify the Commission of the results of the examination of tenders and proposals and shall submit the award proposal, as well as the draft procurement contracts and grant contracts to the Commission for approval.

During the implementation of the procurement contracts and grant contracts, the Partner Country shall equally submit draft addenda and draft administrative orders thereto, to the Commission for prior approval.

The Partner Country shall invite the Commission for provisional and final acceptance.

Report

- 4.3 If Article 5 of the Special Conditions so provides, the report on the implementation of the tasks entrusted to the Partner Country shall follow the template provided in Annex III and the management declaration shall follow the template provided in Annex IV. An independent external audit opinion on the management declaration, performed in accordance with internationally accepted auditing standards, does not have to be provided in this case as the Commission shall conduct the audits for this action. These audits will verify the truthfulness of the assertions made in the management declaration and the legality and regularity of the underlying transactions made.

Payment procedures

4.4 The Partner Country shall provide the Commission with the approved payment requests within the following deadlines, starting from the date of receipt of the payment request, not counting the periods of suspension of the time-limit for payment:

(a) for pre-financing specified in the procurement contract and grant contract:

(i) 15 calendar days for an action financed under the Budget;

(ii) 30 calendar days for an action financed under the EDF;

b) 45 calendar days for other payments

The Commission shall act in accordance with Articles 4.9 and 4.10 within the period amounting to the time-limit for payment provided for in the procurement contract and grant contracts minus the above deadlines.

4.5 Upon receipt of a payment request from a contractor or grant beneficiary, the Partner Country shall inform the Commission of its receipt and shall immediately examine whether the request is admissible, i.e. whether it contains the identification of that contractor or grant beneficiary, the contract or agreement concerned, the amount, the currency and the date. If the Partner Country concludes that the request is inadmissible, it shall reject it and inform the contractor or grant beneficiary of this rejection and of its reasons within 30 days of receipt of the request. The Partner Country shall also inform the Commission of this rejection and its reasons.

4.6 Upon receipt of an admissible payment request, the Partner Country shall examine whether a payment is due, i.e. whether all contractual obligations justifying the payment have been fulfilled, including examining a report, where applicable. If the Partner Country concludes that a payment is not due, it shall inform the contractor or grant beneficiary thereof and of the reasons. The dispatch of this information suspends the time-limit for payment. The Commission shall receive a copy of the information so dispatched. The Commission shall also be informed of the reply or corrective action of the contractor or grant beneficiary. That reply or action aimed at correcting the non-compliance with its contractual obligations shall restart the time-limit for payment. The Partner Country shall examine this reply or action pursuant to this paragraph.

4.7 If the Commission disagrees with the Partner Country's conclusion that a payment is not due, it shall inform the Partner Country thereof. The Partner Country shall re-examine its positions and, if it concludes that the payment is due, it shall inform thereof the contractor or grant beneficiary. The suspension of the time-limit for payment shall be lifted upon dispatch of this information. The Partner Country shall also inform the Commission. The Partner Country shall further proceed as provided for in Article 4.8.

If disagreement between the Partner Country and the Commission persists, the Commission may pay the undisputed part of the invoiced amount provided that it is clearly separable from the disputed amount. It shall inform the Partner Country and the contractor or grant beneficiary of this partial payment.

4.8 Where the Partner Country concludes that the payment is due, it shall transfer the payment request and all necessary accompanying documents to the Commission for approval and payment. It shall provide an overview of how many days of the time-limit for payment are left

and of all periods of suspension of this time-limit.

- 4.9 After transfer of the payment request pursuant to Article 4.8, if the Commission concludes that the payment is not due, it shall inform the Partner Country and, in copy, the contractor or grant beneficiary thereof and of the reasons. Informing the contractor or grant beneficiary shall have the effect of suspending the time-limit for payment, as provided for in the contract concluded. A reply or corrective action of the contractor or grant beneficiary shall be treated by the Partner Country in accordance with Article 4.6.
- 4.10 Where the Partner Country and the Commission conclude that the payment is due, the Commission shall execute the payment.
- 4.11 Where late-payment interest is due to the contractor or grant beneficiary, it shall be allocated between the Partner Country and the Commission pro rata to the days of delay in excess of the time limits stipulated in Article 4.4, subject to the following:
- (a) the number of days used by the Partner Country is calculated from the date of the registration of an admissible payment request referred to in Article 4.6 to the date of the transfer of the request to the Commission referred to in Article 4.8 and from the date of information by the Commission referred to Article 4.9 to the following transfer of the request to the Commission referred to in Article 4.8. Any period of suspension of the time-limit for payment shall be deducted.
 - (b) the number of days used by the Commission is calculated from the date following that of transfer of the request by the Partner Country referred to in Article 4.8 to the date of payment and from the date of transfer to the date of informing the Partner Country pursuant to Article 4.9.
- 4.12 Any circumstances unforeseen by the above procedure shall be solved in a spirit of cooperation between the Partner Country and the Commission by analogy to the above provisions while respecting the contractual relations of the Partner Country with the contractor or grant beneficiary.
- Where feasible, one party shall cooperate at the request of the other party in providing useful information for the assessment of the payment request, even before the payment request is formally transferred to or returned from the first party.
- 4.13 A procurement contract or grant contract which has not given rise to any payment within two years of its signature shall be automatically terminated and its funding shall be decommitted, except in case of litigation before judicial courts or arbitral bodies.

Article 5 - Imprest component of the programme estimate

Application

- 5.1 The programme estimate is a document laying down the programme of activities to be carried out and the human and material resources required, the corresponding budget and the detailed technical and administrative implementing arrangements for the execution of these operational

activities over the operational implementation phase of this Financing Agreement.

The programme estimate implementing the Financing Agreement must respect the procedures and standard documents concerning programme estimates laid down by the Commission, in force at the time of the adoption of the programme estimate in question.

The body implementing those operational activities within the programme estimate, may be the central government of the Partner Country itself (central operations) or a commissioned public law or private law body with a public-service mission (public commissioned operations) or, under EDF only, a private law body without a public-service mission on the basis of a service contract (private commissioned operations).

The programme estimate shall have an Imprest component and may have a component of specific commitments.

Under the component of specific commitments, Article 4 shall apply.

Under the Imprest component of the programme estimate, the implementing body may, up to established thresholds, conduct procurement and grant award procedures without or with limited ex ante control of the Commission and execute payments to the contractors and grant beneficiaries, as well as in the context of direct labour.

Direct labour relates to the operational activities which the implementing body executes directly using staff it employs and/or its existing resources (machinery, equipment, other inputs).

The operating costs incurred by the implementing body may be eligible for EU financing under the Imprest component of the programme estimate. If so, they shall be eligible for EU financing during the entire duration of the execution period of this Financing Agreement, unless an earlier start of cost eligibility is stipulated in Article 6 of the Special Conditions. Operating costs are costs of the implementing body incurred in carrying out implementation tasks and include local staff, utilities (e.g. water, gas, and electricity), rental of premises, consumables, maintenance, short-term business trips and fuel for vehicles. They shall not include procurement of vehicles or of any other equipment, or any operational activity. Such ordinary operating costs may be charged and paid in accordance with the implementing body's own procedures.

Award procedures

5.2 Under the Imprest component of the programme estimate, the implementing body may carry out, totally or partially, the award procedures for procurement and grant contracts in accordance with its own procedures and standard documents, to the extent that prior evidence is obtained by the Commission that the Partner country's implementing body:

- ensures the functioning of an effective and efficient internal control system, and
- applies appropriate rules and procedures for procurement and/or grants.

To the extent that no such evidence is obtained, the award procedures for procurement and grant contracts shall be carried out by the implementing body in accordance with the procedures and standard documents laid down and published by the Commission, in force at the time of the launch of the procedure in question.

Ex ante control

- 5.3 Under the Imprest component, unless the Technical and Administrative Arrangements of the programme estimate stipulate otherwise, the implementing body shall submit to the Commission for prior approval, the tender dossiers and proposals for award decision of procurement contracts whose value exceeds 100,000 EUR, as well as all guidelines for applications and proposals for award decisions of grant contracts, which follow the procedures and standard documents laid down and published by the Commission.

In addition to the record-keeping obligations laid down in Article 1.6 of these General Conditions, the Partner Country shall, during the same period, keep all relevant financial and contractual supporting documents.

Management declaration

- 5.4 The Partner Country shall submit to the Commission annually, by the date stipulated in Article 6 of the Special Conditions, a management declaration signed by the Partner Country using the template in Annex IV.

An independent external audit opinion on the management declaration, performed in accordance with internationally accepted auditing standards, does not have to be provided in this case as the Commission shall conduct the audits for this action. These audits will verify the truthfulness of the assertions made in the management declaration and the legality and regularity of the underlying transactions made.

Payments

- 5.5 The Commission shall transfer the first pre-financing instalment, upon signature of the programme estimate by all parties, within 60 calendar days where the programme estimate is financed by the EDF and 30 calendar days where it is financed from the EU Budget,

The Commission shall pay the further pre-financing instalments within 60 calendar days of receiving and approving the payment request and its reports.

Late-payment interest shall be due pursuant to the applicable Financial Regulation. The time-limit for the payment may be suspended by the Commission by informing the Partner Country, at any time during the period referred to above, that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information which puts in doubt the eligibility of expenditure appearing in a payment request comes to the notice of the Commission, the Commission may suspend the time-limit for the payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The suspension and the reasons for it shall be communicated to the Partner Country as soon as possible. The time-limit for the payment shall resume once the missing supporting documents have been provided or the payment request has been corrected.

- 5.6 The Commission shall make payments to a bank account opened at a financial institution accepted by the Commission.
- 5.7 The Partner Country shall guarantee that funds paid by the Commission can be identified in this bank account.
- 5.8 Transfers in euro shall, if necessary, be converted into the Partner Country's national currency as and when payments have to be made by the Partner Country, at the bank rate in force on the day of payment by the Partner Country.
- 5.9 The Imprest component of the programme estimate which has not given rise to any payment to the Partner Country within two years of the conclusion of the programme estimate shall be automatically terminated, and its funding shall be decommitted. For actions financed under the EDF, an extension of that deadline may be stipulated in Article 6 of the Special Conditions.

Article 6 – Pool Fund managed by the Partner Country

Application

- 6.1 The Partner Country managing a Pool Fund, may be eligible for an EU Contribution to that Pool Fund, to the extent that prior evidence is obtained by the Commission that the managing entity within the Partner Country:
- ensures the functioning of an effective and efficient internal control system,
 - uses an accounting system that provides accurate, complete and reliable information in a timely manner;
 - is subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit service functionally independent of the entity or person concerned;
 - applies appropriate rules and procedures for procurement and grants;
 - ensures the ex post publication of information on recipients; and
 - ensures a reasonable protection of personal data.

Award procedures

- 6.2 Under the EU Contribution to a Partner Country managed Pool Fund, the managing entity within the Partner Country shall carry out the tasks in accordance with its own procedures and standard documents for the award of procurement and grant contracts, or with those agreed upon among the donors.

Implementation

- 6.3 In the case of an EU Contribution to a Partner Country managed Pool Fund, in addition to the rights and obligations already laid down in these General Conditions, further rules detailed in

Annex V to the Financing Agreement shall apply to the Partner Country for the implementation of the EU Contribution to the Pool Fund.

Article 7 - Publication of information on procurement and grant contracts by the Partner Country

- 7.1 The Partner Country undertakes to publish each year in a dedicated and easily accessible place of its internet site, for each procurement and grant contract for which it is contracting authority under the Imprest Component of the programme estimate referred to in Article 5 and the Pool Funds referred to in Article 6, its nature and purpose, the name and locality of the contractor (contractors in case of a consortium) or grant beneficiary (grant beneficiaries in case of a multi-beneficiary grant), as well as the amount of the contract.

The locality of a natural person shall be a region at NUTS2 level. The locality of a legal person shall be its address.

If such internet publication is impossible, the information shall be published by any other appropriate means, including the official journal of the Partner Country.

Article 6 of the Special Conditions shall stipulate the location, on the internet or otherwise, of the place of publication; reference shall be made to this location in the dedicated place of the internet site of the Commission.

- 7.2 Scholarships and direct financial support to natural persons most in need shall be published anonymously and in an accumulated manner by category of expenditure.

Otherwise, names of natural persons shall be replaced by "natural person" two years after publication. The name of a legal entity containing that of a natural person involved in this entity shall be treated as a natural person's name.

Publication of names of natural persons shall be waived if such publication risks violating their fundamental rights or damaging their commercial interests.

The Partner Country shall present a list of data to be published on natural persons with any justifications for proposed waivers of publication to the Commission which must grant prior authorisation to this list. Where necessary, the Commission shall complete the locality of the natural person limited to a region at NUTS2 level.

- 7.3 Publication of the procurement and grant contracts concluded (i.e. signed by the Partner Country and the contractor or grant beneficiary) during the reporting period shall take place within six months following the date for submitting the report pursuant to Article 6 of Special Conditions.

- 7.4 Publication of contracts may be waived if such publication risks harming the commercial interests of contractors or grant beneficiaries. The Partner Country shall present a list with such justifications to the Commission which must grant prior authorisation to such publication waiver.

- 7.5 Where the Commission carries out payments to contractors or grant beneficiaries pursuant to Article 4, it shall ensure the publication of information on procurement contracts and grant contracts according to its rules.

Article 8 - Recovery of funds

- 8.1 The Partner Country shall take any appropriate measures to recover the funds unduly paid.
- Amounts unduly paid and recovered by the Partner Country, amounts from financial guarantees lodged on the basis of procurement and grant award procedures, amounts from financial penalties imposed by the Partner Country, as well as damages awarded to the Partner Country shall be returned to the Commission.
- 8.2 Without prejudice to the above responsibility of the Partner Country to recover funds unduly paid, the Partner Country agrees that the Commission may, in accordance with the provisions of the Financial Regulation applicable and this Financing Agreement, formally establish an amount as being unduly paid under procurement contracts and grant contracts financed under Part One and proceed to its recovery by any means on behalf of the Partner Country, including by offsetting the amount owed by the contractor or grant beneficiary against any of its claims against the EU and by forced recovery before the competent courts.
- 8.3 To this end, the Partner Country shall provide to the Commission all the documentation and information necessary. The Partner Country hereby empowers the Commission to carry out the recovery in particular by calling on a guarantee of a contractor or grant beneficiary of which the Partner Country is the contracting authority or by offsetting the funds to be recovered against any amounts owed to the contractor or grant beneficiary by the Partner Country as contracting authority and financed by the EU under this or another Financing Agreement or by forced recovery before the competent courts.
- 8.4 The Commission shall inform the Partner Country that the recovery proceedings have been initiated (including where necessary before a national court).
- 8.5 Where the Partner Country is a grant beneficiary, subdelegatee or implementing partner of an entity with which the Commission concluded a delegation agreement, the Commission may recover funds from the Partner Country which are due to the entity but which the entity was not able to recover itself.

Article 9 - Financial claims under contracts and agreements

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

Article 10 - Cost overruns and ways of financing them

- 10.1 Individual overruns of the budget headings of the activities implemented by the Partner Country shall be dealt with by reallocating funds within the overall budget, in accordance with Article 25 of these General Conditions.
- 10.2 Wherever there is a risk of overrunning the amount foreseen for the activity implemented by the Partner Country, the Partner Country shall immediately inform the Commission and seek its prior authorisation for the corrective activities planned to cover the overrun, proposing either to scale down the activities or to draw on its own or other non-EU resources.
- 10.3 If the activities cannot be scaled down, or if the overrun cannot be covered either by the Partner Country's own resources or other resources, the Commission may, at the Partner Country's duly substantiated request, decide to grant additional EU 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. This Financing Agreement shall be amended accordingly.

Part Two: Provisions Applicable to Budget Support

Article 11 - Policy dialogue

The Partner Country and the EU commit to engage in a regular constructive dialogue at the appropriate level on the implementation of this Financing Agreement.

Where the Partner Country is an ACP State and this action is financed under the EDF pursuant to Article 1.1 of the Special Conditions, this dialogue may form a part of the broader political dialogue provided for in Article 8 of the ACP-EC Partnership Agreement.

Article 12 - Verification of conditions and disbursement

- 12.1. The Commission shall verify the conditions for the payment of the tranches of the budget support component, as identified in Annex I (Technical and Administrative Provisions).
Where the Commission concludes that the conditions for payment are not fulfilled, it shall inform the Partner Country thereof without undue delay.
- 12.2. Disbursement requests submitted by the Partner Country shall be eligible for EU financing provided that they are in accordance with the provisions set out in Annex I (Technical and Administrative Provisions) and that they are submitted during the operational implementation phase.
- 12.3. The Partner Country shall apply its national foreign exchange regulations in a non-discriminatory manner to all disbursements of the budget support component.
- 12.4. If no payment to the Partner Country is made within two years of the entry into force of this Financing Agreement, its budget support component shall be automatically terminated and its funding shall be decommitted. For actions financed under the EDF, an extension of that

deadline may be stipulated in Article 6 of the Special Conditions.

Article 13 - Transparency of budget support

The Partner Country hereby agrees to the publication by the Commission, of this Financing Agreement and any amendment thereof, including by electronic means, and of such basic information on the budget support which the Commission deems appropriate. Such publication shall not contain any data in violation of the EU laws applicable to the protection of personal data.

Article 14 - Recovery of budget support

All or part of the budget support disbursements may be recovered by the Commission, with due respect to the principle of proportionality, if the Commission establishes that payment has been vitiated by a serious irregularity attributable to the Partner Country, in particular if the Partner Country provided unreliable or incorrect information, or if corruption or fraud was involved.

Part Three: Provisions Applicable to this Action as a Whole, Irrespective of the Management Mode

Article 15 - Execution period and contracting deadline

15.1 The execution period of this Financing Agreement shall comprise two phases:

- an operational implementation phase, in which the operational activities of the action are carried out. This phase shall start on the entry into force of this Financing Agreement or on the date stipulated in the Special Conditions and end with the opening of the closure phase.
- a closure phase, during which final audit and evaluation are carried out and contracts and the programme estimate for the implementation of this Financing Agreement are technically and financially closed. The duration of this phase is stipulated in Article 2.3 of the Special Conditions. It starts after the end of the operational implementation phase.

These periods shall be reflected in the agreements to be concluded by the Partner Country and by the Commission in the implementation of this Financing Agreement, in particular in delegation agreements and procurement and grant contracts.

15.2 Costs related to the operational activities shall be eligible for EU financing only if they have been incurred during the operational implementation phase; the costs incurred before the entry into force of this Financing Agreement shall not be eligible for EU financing unless provided otherwise in Article 6 of the Special Conditions. Costs related to final audits and evaluation, to closure activities and operating costs referred to in Article 5.1 shall be eligible until the end of the closure phase.

15.3 Any balance remaining from the EU contribution shall be automatically decommitted no later than six months after the end of the execution period.

15.4 In exceptional and duly substantiated cases, a request may be made for the extension of the operational implementation phase or the closure phase, as well as correlatively of the execution period. If agreed upon, the Financing Agreement shall be amended accordingly.

15.5 Article 2 of these General Conditions shall apply to procurement contracts and grant contracts awarded by the Commission as contracting authority (direct management) with the exception of the last subparagraph of Article 2.1.

Delegation Agreements concluded by the Commission are subject to a different contracting deadline set out by the EU Financial Regulation. If after expiry of that deadline, the related funds are to be de-committed, the Commission will duly inform the Partner Country thereof.

Article 16 - Verifications and checks by the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors

16.1 The Partner Country shall assist and support the verifications and checks carried out by the Commission, OLAF and the European Court of Auditors at their request.

The Partner Country agrees to the Commission, OLAF and the European Court of Auditors conducting documentary and on-the-spot controls on the use made of EU financing under the activities under this Financing Agreement 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 activities, throughout the duration of this Financing Agreement and for five years from the end of the execution period.

16.2 The Partner Country 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.

To that end, the Partner Country shall 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 this 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 Partner Country being bound to inform the Commission, OLAF or the European Court of Auditors of the exact location at which they are kept.

16.3 The checks and audits described above shall also apply to contractors, grant beneficiaries and subcontractors who have received EU financing.

16.4 The Partner Country shall be notified of on the spot missions by agents appointed by the Commission, OLAF or the European Court of Auditors.

Article 17 - Tasks of the Partner Country in fighting irregularities, fraud and corruption

17.1 The Partner Country shall immediately inform the Commission of any element brought to its attention which arouses suspicions of irregularities, fraud or corruption and of any measure taken or planned to deal with them.

17.2 The Partner Country shall ensure and check regularly that the actions financed from the budget are effectively carried out and implemented correctly. It shall take appropriate measures to prevent, detect and correct irregularities and fraud and where necessary, bring prosecutions and recover funds unduly paid.

"Irregularity" shall mean any infringement of this Financing Agreement, implementing contracts and programme estimate or of EU law resulting from an act or omission by anyone who has, or would have, the effect of prejudicing the funds of the EU, either by reducing or losing revenue owed to 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 general budget of the EU or the EDF;
- 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.

17.3 The Partner Country undertakes to take every appropriate measure to prevent, detect and punish any practices of active or passive corruption during the implementation of the Financing Agreement.

"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.

17.4 If the Partner Country does not take appropriate measures to prevent fraud, irregularities and corruption, the Commission may adopt precautionary measures including the suspension of this Financing Agreement.

Article 18 - Suspension of payments

18.1 Without prejudice to the suspension or termination of this Financing Agreement according to Articles 26 and 27, respectively, the Commission may suspend payments partially or fully, if:

- a) the Commission has established or has serious concerns that, on the basis of information it received, and needs to verify, the Partner Country has committed substantial errors, irregularities or fraud in the procurement and grant award procedure or in the implementation of the action, or the Partner Country has failed to comply with its obligations under this Financing Agreement, including obligations regarding the implementation of the Communication and Visibility plan;
- b) the Commission has established or has serious concerns that, on the basis of information it received, and needs to verify, the Partner Country has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under this or other Financing Agreements, provided that those errors, irregularities, fraud or breach of obligations have a material impact on the implementation on this Financing Agreement or call into question the reliability of the Partner Country's internal control system or the legality and regularity of the underlying expenditure;
- c) the Commission suspects that the Partner Country committed substantial errors, irregularities, fraud or breach of obligations in the procurement and grant award procedure or in the implementation of the action and needs to verify whether they have occurred.
- d) it is necessary to prevent significant damage to the financial interests of the EU.

18.2 The Commission shall immediately inform the Partner Country about the suspension of payments and of the reasons for this suspension.

18.3 The suspension of payments shall have the effect of suspending payment time-limits for any payment request pending.

18.4 In order to resume payments the Partner Country shall endeavour to remedy the situation leading to the suspension as soon as possible and shall inform the Commission of any progress made in this respect. The Commission shall, as soon as it considers that the conditions for resuming payments have been met, inform the Partner Country thereof.

Article 19 - Allocation of funds recovered by the Commission to the action

Where the action is financed under the EDF, amounts unduly paid and recovered by the Commission, amounts from financial guarantees lodged on the basis of procurement and grant award procedures, amounts from financial penalties imposed, as well as damages awarded to the Commission shall be allocated to this action.

Article 20 - Right of establishment and residence

20.1 Where justified by the nature of the procurement contract or grant contract, the Partner Country shall entitle natural and legal persons participating in invitations to tender for works, supply or service contracts or calls for proposals and entities expected to be entrusted with implementation tasks identified in Annex I with a provisional right of establishment and residence in the Partner Country's territory(ies). This right shall remain valid for one month

after the contract is awarded.

- 20.2 The Partner Country shall also entitle procurement contractors and grant beneficiaries, entities entrusted with implementation tasks identified in Annex I (Technical and Administrative Provisions), natural persons whose services are required for the performance of this action and members of their families with similar rights during the implementation of the action.

Article 21 - Tax and customs provisions and foreign exchange arrangements

- 21.1 The Partner Country shall apply to procurement contracts and grants contracts financed by the EU the most favoured tax and customs arrangements applied to States or international development organisations with which it has relations.

Where the Partner Country is an ACP State, account shall not be taken of arrangements applied by it to the other ACP States or to other developing countries for the purpose of determining the most-favoured-State treatment.

- 21.2 Where a Framework Agreement is applicable, which includes more detailed provisions on this subject, these provisions shall apply as well.

Article 22 - Confidentiality

- 22.1 The Partner Country agrees that its documents and data held by an entity with which the Partner Country is in a contractual relationship regarding them may be forwarded to the Commission by that entity for the sole purpose of implementing this or another Financing Agreement. The Commission shall respect all confidentiality arrangements agreed between the Partner Country and that entity.

- 22.2 Without prejudice to Article 16 of these General Conditions, the Partner Country and the Commission shall preserve the confidentiality of any document, information or other material directly related to the implementation of this Financing Agreement that is classified as confidential.

- 22.3 The Parties shall obtain each other's prior written consent before publicly disclosing such information.

- 22.4 The Parties shall remain bound by the confidentiality until five years after the end of the execution period.

Article 23 - Use of studies

The contract related to any study financed under this Financing Agreement shall include the right for the Partner Country and for the Commission to use the study, to publish it and to disclose it to third parties.

Article 24 - Consultation between the Partner Country and the Commission

- 24.1 The Partner Country and the Commission shall consult each other before taking any dispute

relating to the implementation or interpretation of this Financing Agreement further pursuant to Article 29 of these General Conditions.

- 24.2 Where the Commission becomes aware of problems in carrying out procedures relating to management of this Financing Agreement, it shall establish all necessary contacts with the Partner Country to remedy the situation and take any steps that are necessary.
- 24.3 The consultation may lead to the amendment, suspension or termination of this Financing Agreement.
- 24.4 The Commission shall regularly inform the Partner Country of the implementation of activities described in Annex I which do not fall under Parts One and Two of these General Conditions.

Article 25 - Amendment of this Financing Agreement

- 25.1 Any amendment of this Financing Agreement shall be made in writing, including an exchange of letters.
- 25.2 If the request for an amendment comes from the Partner Country, 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 Partner Country and accepted by the Commission. In the exceptional cases of an adjustment of the objectives of the action and/or an increase in the EU contribution, such request shall be submitted at least six months before the amendment is intended to enter into force.
- 25.3 If the adjustment both does not significantly affect the objectives of the activity implemented pursuant to Part One of these General Conditions, and if it concerns matters of detail which do not affect the technical solution adopted, and if it does not include the reallocation of funds, or if it concerns reallocations of funds for an amount equivalent to the amount of the contingency reserve, the Partner Country shall inform the Commission of the adjustment and its justification in writing as soon as possible and may apply that adjustment.
- 25.4 The use of the contingency reserve provided for an action shall be subject to the Commission's prior written approval.
- 25.5 Where the Commission considers that the Partner Country ceases to perform satisfactorily the tasks entrusted pursuant to Article 1.1 of these General Conditions and without prejudice to Articles 26 and 27 of these General Conditions, the Commission may decide to retake the tasks entrusted from the Partner Country in order to continue the implementation of the activities on behalf of the Partner Country after informing the latter in writing.

Article 26 - Suspension of this Financing Agreement

26.1 The Financing Agreement may be suspended in the following cases:

- The Commission may suspend the implementation of this Financing Agreement if the Partner Country breaches an obligation under this Financing Agreement.
- The Commission may suspend the implementation of this Financing Agreement if the

Partner Country breaches any obligation set under the procedures and standard documents referred to in Articles 1, 4, 5 and 6 of these General Conditions.

- The Commission may suspend this Financing Agreement if the Partner Country breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.
- This 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, 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.
- Neither of the Parties shall be held liable for breach of its obligations under this Financing Agreement if it is prevented from fulfilling them by force majeure, provided it takes measures to minimise any possible damage.

26.2 The Commission may suspend this Financing Agreement without prior notice.

26.3 The Commission may take any appropriate precautionary measure before suspension takes place.

26.4 When the suspension is notified, the consequences for the on-going procurement and grant contracts, delegation agreements and programme estimate shall be indicated.

26.5 A suspension of this Financing Agreement is without prejudice to the suspension of payments and termination of this Financing Agreement by the Commission in accordance with Article 18 and 27 of the General Conditions.

26.6 The parties shall resume the implementation of the Financing Agreement once the conditions allow with the prior written approval of the Commission. This is without prejudice to any amendments of this Financing Agreement which may be necessary to adapt the action to the new implementing conditions, including, if possible, the extension of the implementation period, or the termination of this Financing Agreement in accordance with Article 27.

Article 27 - Termination of this Financing Agreement

27.1. If the issues which led to the suspension of this Financing Agreement have not been resolved within a maximum period of 180 days, either party may terminate this Financing Agreement at 30 days' notice.

27.2. This Financing Agreement shall be automatically terminated, if no implementing contract has been signed within the deadlines of Article 2.

- 27.3 When the termination is notified, the consequences for the on-going procurement contracts, grant contracts and programme estimate shall be indicated.

Article 28 - Dispute settlement arrangements

- 28.1 Any dispute concerning this Financing Agreement which cannot be settled within a six-month period by the consultations between the parties provided for in Article 24 of these General Conditions may be settled by arbitration at one of the parties' request.

Where the Partner Country is an ACP State or an ACP regional body or organisation and this action is financed under the EDF, the dispute shall be submitted, prior to arbitration and after the consultations provided for in Article 24 of these General Conditions, to the ACP-EC Council of Ministers, or, between its meetings, to the ACP-EC Committee of Ambassadors, pursuant to Article 98 of the ACP-EC Partnership Agreement. If the Council or Committee does not succeed in settling the dispute, either party may request settlement of the dispute by arbitration in accordance with Articles 28.2, 28.3 and 28.4.

- 28.2 Each party 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.
- 28.3 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.
- 28.4 Each party shall be bound to take the measures necessary for the application of the arbitrators' decision.

ANNEX IV- MANAGEMENT DECLARATION

Instructions are highlighted in yellow and must be deleted from the final version. Grey highlighted text in square brackets contains options that can be chosen, depending on the instructions accompanying them. The square brackets and the grey highlighting have to be removed in the final version. Text requested by the instruction is to be filled in between the < > signs.

I, the undersigned, <insert forename and surname>, in my capacity as <insert function in the partner country or the designated entity pursuant to Article 1.2 of the General Conditions of the Financing Agreement>, confirm that in relation to the Financing Agreement[s] <insert reference of the concrete Agreement; insert references to all of the Financing Agreements if the Beneficiary chose the option of the global management declaration covering all of the Financing Agreements>, based on my own judgement and on the information at my disposal, including, inter alia, the results of the [audits and delete if not applicable] controls carried out, that:

1. The information submitted for the period running from This period precedes the deadline for submission of this declaration stipulated in Article 6 of the Special Conditions and leaves no gaps with regard to the previous periods <insert date, can be the date of entry into force of the Financing Agreement for the first declaration> to <insert date, can be the end of the execution period of the Financing Agreement for the last declaration> is properly presented, complete and accurate.
2. The expenditure was used for its intended purpose as defined in Annex I (Technical and Administrative Provisions) of the above-mentioned Financing Agreement[s].
3. The control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.
4. The Beneficiary performed the activities in compliance with the obligations of the above-mentioned Financing Agreement[s]; in particular, it:
 - set up and ensured the functioning of an effective and efficient internal control system pursuant to Article 1.4 of Annex II (General Conditions) of the Financing Agreement;
 - used an accounting system that provided accurate, complete and reliable information in a timely manner where it carried out payment pursuant to Article 5 of Annex II (General Conditions) of the Financing Agreement;
 - applied appropriate rules and procedures for providing financing from Union funds through grants and procurement pursuant to Articles 1.3 and 5.3 of Annex II (General Conditions) of the Financing Agreement;

- ensures the ex post publication of information on procurement and grant contracts in accordance with Article 7 of Annex II (General Conditions) of the Financing Agreement;
- ensured an appropriate protection of personal data in accordance with Article 1.10 of Annex II (General Conditions) of the Financing Agreement.

Furthermore, I confirm that I am not aware of any undisclosed matter which could harm the interests of the European Union.

~~However, the following reservations should be noted:~~ <insert reservations, number them, if necessary> Reservations should be noted in case of significant weaknesses that fall within the scope of the management declaration. For example, significant control system weaknesses, significant occurrence of errors in the underlying transactions (legality and regularity), such as errors in public procurement or grant award procedures;

<insert place and date>

.....
<insert signature>

<insert forename, surname and function>