

CREDIT NO. NDF C108

FINANCING AGREEMENT

West Africa Coastal Areas Program (WACA - Benin)

between

THE REPUBLIC OF BENIN

and

NORDIC DEVELOPMENT FUND

Dated 19 April 2018

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FINANCING AGREEMENT

Between the **REPUBLIC OF BENIN** (the "Borrower") and **NORDIC DEVELOPMENT FUND** (the "Fund" or "NDF").

WHEREAS

- a) the Fund was established as a Nordic multilateral development financing institution pursuant to an agreement between the Governments of Denmark, Finland, Iceland, Norway and Sweden for the purpose of promoting economic and social development in developing countries through participation in financing on concessional terms of projects of interest to the Nordic Countries;
- b) the Borrower, having satisfied itself of the feasibility and priority of the project described in Annex 1 to this Agreement (the "Project"), has requested the Fund to assist in the financing of the Project through a credit;
- c) the Borrower intends to enter into an agreement with the International Development Association (the "Lead Agency") to assist in the financing of the Project;
- d) the Project will be carried out by the Ministry of Living Environment and Sustainable Development of the Borrower (the "Executing Agency"). The Borrower will make the proceeds of the Credit (as defined in Article 1) available to the Executing Agency as provided for in this Agreement;
- e) the Borrower and the Fund have entered into an agreement on the legal status of the Fund in the Republic of Benin on 31 March 1998;
- f) the Fund has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement;

NOW IT IS AGREED:

ARTICLE I

Definitions

1.01 Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the Preamble to this Agreement have the meanings therein set forth, and the following additional terms have the following meanings:

"Agreement" means this particular financing agreement, including all annexes, schedules and agreements supplemental hereto, as such agreement may be amended from time to time;

"Anticorruption Policy" means NDF's Policy on Anticorruption and Integrity, as in effect at any given time and available at NDF's website;

"Banking Day" means, in relation to any place where transactions under this Agreement have to be carried out, a day on which commercial banks in such place are neither required nor authorised to be closed;

"Closing Date" means the date after which the right of the Borrower to make drawdowns under this Agreement may be terminated by the Fund, such date being specified in Section 2.07;

"Contractor" means a consultant, supplier of goods, contractor of works and/or provider of services for the Project, selected and employed or contracted in accordance with this Agreement;

"Credit" means the credit provided for in this Agreement, any part thereof or any outstanding amount thereof as the context requires;

"Disbursement Deadline Date" means the date three (3) months after the Closing Date, which is the final date on which the Fund will accept disbursement requests;

"Disbursement Instructions" mean NDF Disbursement Instructions, as in effect at any given time;

"Dollar(s)", "USD" and the sign "\$" mean the lawful currency of the United States of America;

"Eligible Expenditure" means, except as otherwise provided in this Agreement, an expenditure incurred prior to or on the Closing Date in respect of the reasonable cost of goods, works and services required and procured for the Project and to be financed by means of the Credit, all in accordance with the provisions of this Agreement as outlined in Annex 3 or otherwise agreed between the parties to this agreement, provided however that a payment prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations shall not be an Eligible Expenditure;

"EUR" and the sign "€" mean euro, the lawful currency of the member states of the European Union that have adopted and continue to retain a common single currency through monetary union in accordance with European Union treaty law;

"*Payment Date*" means each of January 15 and July 15 in each calendar year. In the event that a Payment Date would otherwise fall on a day that is not a Banking Day, such Payment Date shall instead be the next succeeding Banking Day;

"*Policy on Taxes*" means NDF Operational Policy on Taxes, as in effect at any given time and available on NDF's website.

"*Prohibited Practices*" means corrupt, fraudulent, collusive, coercive and obstructive practices, as defined in the Anticorruption Policy.

"*Project*" means the activities to be financed by the proceeds of the Credit, and the World Bank funding, as specified in Annex 1 to this Agreement.

"*Special Advance*" means payments to a Special Account for the expected cost of Eligible Expenditures related to a Project.

"*Special Commitment*" means: payments to a financial institution for the cost of Eligible Expenditures related to a Project covered by a Special Commitment extended by NDF to the negotiating bank for the financing of a Documentary Credit (Letter of Credit).

"*Taxes*" includes imposts, levies, fees and duties of any nature, whether in effect at the date of this Agreement or imposed thereafter.

"*Tenderer*" means a firm or other type of entity, association of firms or entities, or an individual who submits or has submitted a proposal or a bid for the supply of goods, construction of works or provision of services for the Project.

ARTICLE II

Disbursements

2.01 The Fund agrees to lend to the Borrower, on the terms and subject to the conditions set forth or referred to herein, an amount of up to EUR 4,000,000 (four million euros) (the "Credit").

2.02 The Borrower shall be entitled to draw down the Credit in accordance with the provisions of this Agreement and the Disbursement Instructions, for the purpose of paying Eligible Expenditures. The Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Credit in accordance with Section 8.08 and Annexes 1, 2 and 3 of this Agreement.

2.03 No amount of the Credit shall be drawn or be applied, directly or indirectly on account of any Taxes levied by, or in the territory of the Borrower on goods or services, or on the procurement, manufacture, importation or supply thereof.

2.04 No amount of the Credit shall be drawn or be applied, directly or indirectly, on account of payments made prior to the date of this Agreement, unless the Fund shall agree otherwise.

2.05 Disbursements under the Credit shall be made subject to

(a) the conditions precedent specified in Article III having been, and remaining, fulfilled to the Fund's satisfaction;

(b) in the case of Special Commitment or Special Advance, the Fund having received and accepted all documentation required for these disbursement methods, as set out in the Disbursement Instructions;

(c) receipt by the Fund of (i) a disbursement request, with supporting documentation, acceptable to the Fund submitted by or on behalf of the Borrower, or (ii) in the case of Special Commitment, a payment request submitted by the third party to whom the Special Commitment was provided by the Fund.

2.06 Each disbursement shall be made on a date determined by the Fund. Unless the Borrower has requested disbursement on a specified later date, disbursement will normally be made not later than 30 calendar days after NDF's receipt of the disbursement request, provided that all conditions precedent to disbursement set out in Article III hereof have been fulfilled and remain fulfilled.

2.07 The Closing Date shall be 31 December 2023, or such later date as the Fund shall establish.

ARTICLE III

Conditions Precedent to Disbursement

3.01 Unless otherwise agreed, the making of disbursements from the Credit shall be subject to the conditions precedent that

(a) this Agreement is in full force and effect, and no event, which would entitle the Fund to suspend disbursements under this Agreement, shall have occurred and be continuing;

(b) a credit agreement between the Lead Agency and the Borrower for the West Africa Coastal Areas Resilience Investment Project in Benin has been signed and become effective;

(c) the Borrower has taken or caused to be taken all actions necessary or advisable to enable the Borrower to receive the Credit and to perform its obligations hereunder, including obtaining all required exemptions, consents and permits; and

(d) the Fund has received and accepted

(i) a legal opinion showing that this Agreement has been duly authorised and/or ratified by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms;

- (ii) if requested by the Fund, further evidence satisfactory to it that the execution and delivery of this Agreement on behalf of the Borrower has been duly authorised by all necessary authorities;
- (iii) evidence satisfactory to the Fund of the authority of the person or persons authorised to sign disbursement requests and the authenticated specimen signature of any such person;
- (iv) evidence satisfactory to the Fund that financing contemplated for the Project from International Development Association (IDA) and Global Environmental Facility (GEF) has been obtained, and that conditions precedent to the effectiveness of such financing have been met; and
- (v) any other documentation the Fund reasonably requests relating to the execution of this Agreement or the implementation of the Project.

3.02 All documentation to be delivered to the Fund in accordance with this Article III shall be in English, or if in another language, complemented by an official translation in English.

ARTICLE IV

Charges

4.01 (a) The Borrower shall pay to the Fund a commitment charge on the undisbursed amount of the Credit at the rate of 0.5% per annum.

(b) The commitment charge shall accrue from the date 12 months after the date of this Agreement to the respective dates on which amounts are either disbursed or cancelled.

4.02 The Borrower shall pay to the Fund a service charge at the rate of 0.75% per annum on the Credit outstanding at any time.

4.03 Commitment charges and service charges shall be paid semi-annually in arrears on the applicable Payment Dates, and shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE V
Repayment

5.01 The Borrower shall repay the disbursed principal amount of the Credit in semi-annual instalments commencing on the last Payment Date in 2024 and ending on the first Payment Date in 2056. The instalments payable shall be 3.125% per annum of the principal amount.

5.02 Notwithstanding the above the Borrower shall have the right to repay one or more instalments in advance of maturity, provided that after such prepayment no portion of the principal amount of the Credit maturing after the prepaid portion shall remain outstanding.

ARTICLE VI
Currency Provisions
Payments by the Borrower
Taxes and Restrictions

6.01 The proceeds of the Credit shall be disbursed in a freely convertible currency with reference to EUR in accordance with section 6.03 hereof.

6.02 The Borrower shall pay the principal of, and service and commitment charges on, the Credit in EUR.

6.03 Whenever it shall be necessary for the purpose of this Agreement to determine the value of one currency or unit of account with reference to another currency or unit of account as of a given date, such value shall be as reasonably determined by the Fund.

6.04 Payments by the Borrower shall be made on the due date in immediately available funds to such account as may be notified to the Borrower by the Fund.

6.05 All payments made by the Borrower under this Agreement shall be made free of restrictions and without deduction of any kind, including deductions for any Taxes imposed by or in the territory of the Borrower. However, if the Borrower shall be compelled by any law or regulation to comply with such restrictions or to make or suffer deductions, and as a result thereof the Fund would not receive payment in full as contemplated in this Agreement, the Borrower shall pay such higher amounts as may be necessary to ensure that the net amounts received by the Fund will equal the amounts payable under this Agreement.

6.06 The Borrower shall pay or cause to be paid any Taxes levied under the laws of the Borrower and any fees on or in connection with the execution, issue, delivery or registration of, or payments under, this Agreement.

6.07 The liability of the Borrower to effect payment of the principal amount of and charges on the Credit and of any other amount to be paid under this Agreement on the due dates, shall not be conditional upon performance by a Contractor or any co-operating party and shall not be affected in any way by any claim which the Borrower may have or might consider that it has against a Contractor or any co-operating party as aforesaid, or by any other reason whatsoever.

ARTICLE VII

Co-operation and Information

Borrower's Undertakings and Representations

7.01 The Borrower represents that this Agreement has been duly authorised, and has been duly executed, signed and delivered on behalf of the Borrower and is legally binding upon the Borrower in accordance with its terms and conditions.

7.02 The Borrower and the Fund shall co-operate fully to ensure that the purpose of the Credit will be accomplished. To that end, each of them shall furnish to the other party all such information as it shall reasonably request with regard to the general status of the Credit and the Project.

7.03 The Borrower shall promptly inform the Fund of (i) any condition which interferes or threatens to interfere with the accomplishment of the purpose of the Credit (including substantial increase in the cost of the Project), and (ii) any event which with the lapse of time or otherwise would entitle the Fund to suspend disbursements under this Agreement.

7.04 The Borrower shall include all amounts due and payable, or to fall due and payable, to the Fund during each fiscal year in its annual budget for such year.

7.05 The Borrower represents that its obligations of payment under this Agreement constitute general and unconditional obligations that rank and will rank at least *pari passu* with all other present and future unsecured, unsubordinated obligations of the Borrower, with the exception only of certain obligations which are mandatorily preferred by laws of general application.

7.06 The Borrower recognises that the Fund follows policies similar to other multilateral financial institutions as regards project execution and debt service obligations of its Beneficiaries and Borrowers, including the policy of non-participation in debt rescheduling.

7.07 (a) The Borrower undertakes to comply with and ensure that the Project is implemented in accordance with the Anticorruption Policy.

(b) The Borrower undertakes to take all necessary action to prevent and detect Prohibited Practices, as defined in the Anticorruption Policy, within its territory and to pursue, by all appropriate means, any such practices whenever identified.

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