

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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TABLE OF CONTENTS

ARTICLE I	Definitions	1
ARTICLE II	Disbursements	2
ARTICLE III	Conditions Precedent to Disbursement	3
ARTICLE IV	Charges	4
ARTICLE V	Repayment	5
ARTICLE VI	Currency Provisions Payments by the Borrower Taxes and Restrictions	5
ARTICLE VII	Co-operation and Information Borrower's Undertakings and Representations	6
ARTICLE VIII	Execution of the Project	7
ARTICLE IX	Cancellation and Suspension	10
ARTICLE X	Acceleration of Maturity	12
ARTICLE XI	Governing Law and Arbitration Failure to Exercise Rights Waiver of Immunity	13
ARTICLE XII	Miscellaneous Provisions	14
ARTICLE XIII	Ratification	15
ANNEX 1	Project Description	16
ANNEX 2	Procurement	20
ANNEX 3	Eligible Expenditures	23

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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(c) The Borrower undertakes to promptly inform the Fund of any allegation or finding of Prohibited Practices, in connection with the Project or with the use of the proceeds of the Credit.

(d) The Borrower undertakes to comply with applicable World Bank Group safeguard policies and guidelines, including but not limited to the Environmental and Social Management Framework, the Resettlement Policy Framework and the Ethnic Group Policy Framework.

(e) The Borrower acknowledges that the Fund reserves the right to investigate, directly or through any agent appointed by the Fund, any Prohibited Practices relating to the Project or the use of the proceeds of the Credit and undertakes to cooperate in any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

ARTICLE VIII

Execution of the Project

8.01 The Borrower shall take or cause to be taken all actions which shall be necessary to execute the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, technical, social, environmental and climate change mitigation and adaptation standards and practices, in accordance with this Agreement. These practices also include transparency in Project operations and wide and easy access to public information on the Project. In particular, the Borrower shall make available to the public: (i) Project-related safeguards assessments and plans related to environment, resettlement, and indigenous peoples; (ii) audited annual financial statements for the Project; (iii) procurement plans; and (iv) results of procurement procedures.

8.02 For the purposes of ensuring the efficient and effective carrying out of the Project, the Borrower shall maintain, at all times during the implementation of the Project, Project implementation structures within the Executing Agency with functions and resources satisfactory to the Fund, and with staff in adequate numbers and with qualifications, experience and terms of reference satisfactory to the Fund.

8.03 (a) The Borrower shall ensure that the proceeds of the Credit shall be used only for the financing of Eligible Expenditures for the Project or, as applicable, Project component(s) for which the Credit is extended. Procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Annexes 1, 2 and 3 to this Agreement.

(b) The Borrower shall ensure that in respect of procurement of goods, works and services for the Project, invitations to tender as well as contracts shall, respectively, include clauses that give the Borrower, the Executing Agency, and the Fund the right to (i) demand investigations of the Tenderer's/Contractor's books by independent auditors for the purpose of ascertaining whether or not Prohibited Practices have taken place, (ii) reject any tender and cancel any procurement contract in case any Prohibited Practices have taken place in connection with the procurement procedure related to the contract or the execution thereof, (iii) claim compensation for the damage or loss arising from any such

rejection of tender or cancellation of contract, and (iv) exclude the Tenderer/Contractor, either indefinitely or for a certain period of time, from competing for and participating in the execution of contracts in the territory of the Borrower.

8.04 The Borrower shall ensure that the Project is carried out in accordance with the arrangements and procedures set out in its Project Implementation Manual ("PIM") prepared in cooperation with the Lead Agency (provided, however, that in the event of any conflict between the arrangements and procedures set out in the PIM and the provisions of this Agreement, or any other arrangements and procedures communicated in writing by the Fund to the Borrower, the provisions of this Agreement, or any other such arrangements and procedures as communicated in writing by the Fund, shall prevail).

8.05 In addition to the proceeds of the Credit, the Borrower shall make available or cause to be made available promptly when needed, all other funds that are required for the execution of the Project (including any funds that may be required to meet any increase in cost).

8.06 The Borrower shall insure or cause to be insured, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Credit against hazards incidental to the acquisition, transportation and delivery thereof to the place of use or installation. Any indemnity for such insurance shall be payable in a freely usable currency to replace or repair such goods.

8.07 The Borrower shall:

(i) maintain or cause to be maintained records and procedures adequate to record and monitor the progress of the Project (including its cost and the benefits to be derived from it), to identify the goods, works and services financed out of the proceeds of the Credit and to disclose their use in the Project;

(ii) ensure that such records mentioned in (i) above are retained until at least one year following receipt by the Fund of the final audited financial statements of the Project or two years after the Closing Date; and

(iii) enable representatives appointed by the Fund to visit any facilities and construction sites included in the Project and to examine the goods, works and services financed out of proceeds of the Credits and any plants, installations, sites, works, buildings, property, equipment, records and documents relevant to the performance of the obligations of the Borrower under this Agreement.

8.08 The Borrower shall furnish or cause to be furnished to the Fund as follows:

(i) the Borrower shall ensure that the Fund is furnished, not later than November 30 of each fiscal year of the Borrower (or such later date as the Fund may agree) during the implementation of the Project for the Fund's no-objection, a consolidated Annual Work Plan and Budget ("AWP&B") containing all Project activities and Eligible Expenditures proposed to be included in the Project in the Borrower's following fiscal year, including the

Fund's, the Borrower's and the Lead Agency's respective shares in the cost of the AWP&B;

(ii) the Borrower shall ensure that the Project is implemented in accordance with the AWP&B (provided, however, that in the event of any conflict between the AWP&B and the provisions of this Agreement, the provisions of this Agreement shall prevail) and shall provide, promptly as needed, its share of the Project financing as specified in the AWP&B;

(iii) the Borrower shall not make or allow to be made any change to the AWP&B without prior no-objection in writing by the Fund;

(iv) at a minimum semi-annually, reports on the implementation of the Project including, inter alia, information on the accomplishment of the targets and actions set out in Annex 1 to this Agreement, including the logical framework where relevant, and on the operation and management of the Project facilities, if relevant, as well as reasonably detailed information concerning the Credit, the budgeted and actual cost of the Project, the budgeted and actual expenditure of the contracts financed by the Credit, and the goods and services financed out of such proceeds;

(v) a copy of the audited annual financial statements of the Project, or, if the Project is a part of a larger project implemented by the Lead Agency, a copy of the audited financial statements for that project, provided such financial statements also include information on the Credit;

(vi) if so requested by the Fund, audited financial statements of the use of the Credit, in form and substance acceptable to the Fund, prepared by an independent auditor for the preceding financial year. The cost of such audit may be covered by proceeds of the Credit. If sufficient Credit proceeds are not available, the Fund and the Borrower shall agree on how to finance the audit;

(vii) promptly after completion of the Project, but in any event not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Fund, a reasonably detailed report, in form and substance acceptable to the Fund, on the use of the proceeds of the Credit, the execution of the Project and the results derived and to be derived from it; and

(viii) any other information the Fund shall reasonably request relating to the Project or the proceeds of the Credit.

8.09 All reports shall be provided electronically unless otherwise requested by the Fund.

8.10 Ownership, title and industrial and property rights in the results of the implementation of the Project and the reports and other related documents shall be vested in the Borrower, Implementing Agency or as otherwise agreed between the parties. Notwithstanding the foregoing, the Borrower shall ensure that the Fund shall have the right to use free of charge and as it sees fit, all documents deriving from the implementation of the Project, whatever their form, provided that such use does not breach any existing industrial and/or intellectual property rights.

ARTICLE IX

Cancellation and Suspension

9.01 The Borrower may by notice to the Fund cancel any undisbursed amount of the Credit in respect of which the Borrower has not submitted a disbursement request prior to the giving of such notice. Unless the Fund shall otherwise agree, such notice of cancellation shall be irrevocable.

9.02 If any of the following events of suspension shall have occurred and be continuing, the Fund may, by notice to the Borrower, suspend in whole or in part the right of the Borrower to draw down the Credit:

- (a) The Borrower shall have failed to make payment of principal, charges or any other amount due to the Fund under this Agreement or under any other grant, credit or guarantee agreement between the Borrower and the Fund.
- (b) The Borrower shall have failed to perform any other obligation under this Agreement.
- (c) The Borrower shall have failed to perform any of its obligations (other than payment obligations) under any credit or grant or other financing agreement with the Fund, which gives the Fund the right to suspend in whole or in part the right of the Borrower to make drawings under such agreement.
- (d) The Fund shall have suspended in whole or in part the right of the Borrower to make drawings under any other grant or credit agreement with the Fund because of a failure by the Borrower to perform any of its obligations under such agreement.
- (e) As a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable that the Project can be carried out or that the Borrower will be able to perform its obligations under this Agreement.
- (f) A representation made by the Borrower in or pursuant to this Agreement, or any statement furnished in connection therewith, and intended to be relied upon by the Fund in extending the Credit, shall have been incorrect in any material respect.
- (g) (i) (A) The right of the Borrower to draw down the proceeds of any grant or credit made to the Borrower for financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the agreement providing therefor, or

(B) Any such credit shall have become due and payable prior to the agreed maturity thereof.

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- (ii) Subparagraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Fund that (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Borrower to perform any of its obligations under such agreement; and (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.
- (h) The Borrower has failed to pay any of its external debt to a multilateral financial institution.
- (i) The Fund shall have determined, with respect to the Project or any contract to be financed in full or in part out of the proceeds of the Credit, that Prohibited Practices were engaged in by representatives of the Borrower or any other beneficiary or potential beneficiary of the Credit during the procurement of goods and services, consultant selection or the execution of a contract, without the Borrower having taken timely and appropriate action satisfactory to the Fund to remedy the situation; or the Fund shall have determined that the procurement of any goods or services to be financed out of the proceeds of the Credit is inconsistent with the relevant procedure agreed on between the Borrower and the Fund.
- (j) Payments to the Borrower are prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

The right of the Borrower to draw down the Credit shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist, unless the Fund shall have notified the Borrower that the right to draw down has been restored in whole or in part, as the case may be.

9.03 If (a) the conditions precedent have not been fulfilled 180 calendar days after the date of this Agreement, (b) the right of the Borrower to draw down the Credit shall have been suspended with respect to any amount of the Credit for a continuous period of thirty days, (c) at any time, the Fund determines, after consultation with the Borrower, that an amount of the Credit will not be required to finance the Project's costs to be financed out of the proceeds of the Credit, (d) at any time the Fund determines, with respect to any contract to be financed in full or in part out of the proceeds of the Credit, that Prohibited Practices were engaged in by representatives of the Borrower or any other beneficiary or potential beneficiary of the Credit during the procurement of goods and services, consultants' selection or the execution of a contract, without the Borrower having taken timely and appropriate action satisfactory to the Fund to remedy the situation, or (e) after the Closing Date, an amount of the Credit shall remain undrawn, the Fund may, by notice to the Borrower, terminate the right of the Borrower to draw down such amount. Upon the giving of such notice, such amount of the Credit shall be cancelled.

9.04 Notwithstanding any cancellation or suspension, all the provisions of this Agreement shall continue in full force and effect except as specifically provided in this Article.

ARTICLE X

Acceleration of Maturity

10.01 If any of the following events shall occur and shall continue for the period specified below, if any, then at any subsequent time during the continuance thereof, the Fund, at its option, may by notice to the Borrower declare the principal of the Credit then outstanding to be due and payable immediately together with the charges thereon, and upon any such declaration such principal amount, together with such charges, shall become due and payable immediately:

(a) A default shall occur in the payment of principal or any other payment required under this Agreement and such default shall continue for a period of thirty (30) days.

(b) A default shall occur in the payment by the Borrower of principal or any other amount due to the Fund under any other grant, credit or guarantee agreement between the Borrower and the Fund and such default shall continue for a period of thirty (30) days.

(c) A default shall occur in the performance of any other obligation on the part of the Borrower under this Agreement, and such default shall continue for a period of sixty (60) days after notice thereof shall have been given by the Fund to the Borrower.

(d) An event specified in paragraph (e), (f) or (h) of section 9.02 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Fund to the Borrower.

(e) The event specified in clause (g)(i)(B) of section 9.02 of this Agreement shall occur, subject to the proviso of subparagraph (g)(ii) of that section.

ARTICLE XI
Governing Law and Arbitration
Failure to Exercise Rights
Waiver of Immunity

11.01 The rights and obligations of the Borrower and the Fund under this Agreement shall be valid and enforceable in accordance with the terms hereof notwithstanding the law of any state or political subdivision thereof to the contrary. Neither the Borrower nor the Fund shall be entitled in any proceeding under this Article to assert any claim that any provision of this Agreement is invalid or unenforceable because of any provision of the Articles of Agreement or the Statutes of the Fund.

11.02 Any dispute, controversy or claim arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, which has not been settled by agreement of the parties within 60 calendar days, shall be settled by final and binding arbitration under the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, ("Rules") as in effect on the date of this Agreement. Article 26 of the Rules (concerning interim measures) shall, however, not be applicable to NDF in an arbitral proceeding

The place of arbitration shall be Paris, France and the language of the arbitral proceedings shall be English.

11.03 Service of any notice of process in connection with any proceeding under this Article may be made in the manner provided for in section 12.02 hereof. The parties hereto waive any and all other requirements for the service of any such notice of process.

11.04 No delay in exercising or omission to exercise any right, power or remedy accruing to any party under this Agreement upon default or otherwise shall impair any such right, power or remedy or be construed to be a waiver thereof, nor shall any action of such party in respect of any default affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

11.05 The parties hereby expressly (a) recognise that this Agreement is an agreement of commercial nature, and (b) waive any right of immunity they might have on the grounds of sovereignty or otherwise in connection with any arbitration proceeding pursuant to section 11.02 hereof or with the enforcement of any arbitral award pursuant thereto.

ARTICLE XII

Miscellaneous Provisions

12.01 The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of signing and executing on behalf of the Borrower any documents used in connection with this Agreement. This notwithstanding, the Executing Agency and the Fund may agree in writing upon any change to, or further specification of, Annex 1, Project Description; Annex 2, Procurement; and Annex 3, Eligible Expenditures provided that the amount of the Credit will not be increased, and any such change or further specification shall be deemed as an integral part of this Agreement.

12.02 Any notice or request required or permitted to be given or made under this Agreement shall be made in writing in the English language and may be delivered (i) by airmail or internationally recognised courier service, (ii) by telefax, or (iii) by email to the party to which it is required or permitted to be given or made, at such party's address specified below or at such other address as such party shall have designated by notice to the other party. Any notice expressly required under this Agreement shall, if given by telefax or email, promptly be confirmed by letter.

For the Fund:

Nordic Development Fund
P.O. Box 185
FIN-00171 Helsinki
Finland
Telefax: +358-9-622 1491
Email: info.ndf@ndf.fi

For the Borrower:

Ministry of Economy and Finance
O1 BP ; 302 Cotonou -Route de l'Aéroport
Benin
Telefax: +229-21 30 18 51; +229-21 31 53 56
Email: sministredesfinances@yahoo.fr

For the Executing Agency:

Ministry of Living Environment and Sustainable Development
01 BP 3621 Cotonou
Benin
Telefax: +229-21315081
Email: spmcvdd@gmail.com

12.03 This Agreement is made in two copies each of which shall be an original.

12.04 The following annex forms part of this Agreement:

Annex 1 Project Description
Annex 2 Procurement
Annex 3 Eligible Expenditures

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ARTICLE XIII

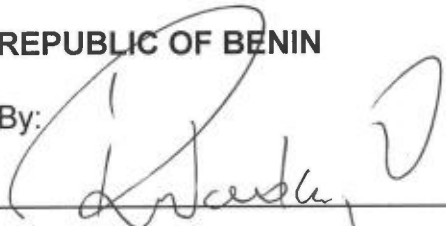
Ratification

This Agreement shall be ratified in accordance with the appropriate constitutional procedures prior to becoming binding on the Borrower. Such binding effect shall be reflected in the legal opinion referred to in Paragraph 3.01(d)(i) hereof.

If this Agreement has not become fully binding on the Borrower by latest one year after the signing of this Agreement, the Fund shall be entitled to declare this Agreement null and void.

IN WITNESS WHEREOF the parties hereto, acting through their duly authorised representatives, have caused this Agreement to be signed with their respective names as of 12 April 2018 (date).

REPUBLIC OF BENIN

By: 

Romuald WADAGNI
Minister of Economy and Finance of Benin

NORDIC DEVELOPMENT FUND

By:  

Pasi Hellman

Leena Klossner

Managing Director

Vice President and Deputy Managing Director

PROJECT DESCRIPTION

BACKGROUND

In response to demand from six countries (Benin, Ivory Coast, Mauritania, Sao Tome and Principe, Senegal, and Togo), the World Bank has developed the West Africa Coastal Areas Program (WACA) consisting of the Resilience Investment Program (WACA ResIP) and the WACA Platform. The WACA Platform will provide overall strategic guidance, take policy decisions, ensure the coherence of the program's priorities, and crowd in knowledge and finance that could extend resources and solutions for potential follow-up investments to other countries on the coastline between Mauritania and Gabon.

NDF financing for WACA consists of three interlinked projects: a credit to WACA ResIP Senegal (the "Project"), a credit to WACA ResIP Benin and a grant to the WACA Platform for the benefit of the West Africa region.

OBJECTIVES

The general objective of WACA is to strengthen the resilience of targeted communities and areas in coastal Western Africa.

The objective of the NDF funding is to improve climate resilience in coastal regions of Benin and Senegal. Another objective of the NDF funding is to strengthen regional climate change cooperation through the WACA Platform to allow regional integration and joint action, test innovative financial instruments, and where relevant involve the private sector. NDF's support to the WACA Platform includes also technical implementation support to the Project.

THE PROJECT

The NDF credit financing to Benin is provided in parallel to the World Bank financing to WACA ResIP. The following project description is for the full World Bank/NDF Project. It should be noted that other financing partners such as the French Fund for the Global Environment (FFEM), the African Development Bank (AfDB), the French Development Agency (AFD) and the Green Climate Fund (GCF) may provide additional funding to the Project.

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WACA consists of a combination of physical or thematic inter-related regionally and nationally implemented activities. The table below provides the estimated costs (in USD million) for WACA per program's intervention, implementing party and financier:

Program	Implementing party	IDA	GEF	NDF	Gov	GFDRR	TOTAL
WACA Platform & regional activities	World Bank	0.3		6.0 ^{a)}		1.0	7.3
WACA ResIP (comprising national and regional activities to be implemented by national and regional institutions)	Regional institutions ^{b)}	12.0					12.0
	Benin	45.0	11.6	4.7	2.0		63.3
	Cote d'Ivoire	30.0					30.0
	Mauritania	20.0					20.0
	Senegal	30.0		4.7	1.3		36.0
	Sao Tome and Principe	8.0	1.1		0.5		9.6
	Togo	45.0	7.5		2.0		54.5
TOTAL		190.3 ^{c)}	20.2	15.4 ^{d)}	5.8	1.0	232.7

- a) A part of NDF's grant will be used to support regional activities to be implemented by regional institutions, to be agreed between NDF and the WB.
- b) Activities to be implemented by WAEMU, IUCN, the Secretariat of the Abidjan Convention and CSE.
- c) Consisting of USD 12.3 million is IDA grant and USD 178 million IDA credit.
- d) NDF's financing is committed in EUR and it consists of two EUR 4.0 million loans and one EUR 5.1 million grant. The exchange rate is 1EUR=1.18 USD (8 December 2017).

In all countries, the activities under WACA ResIP are grouped under 4 components:

- Component 1: Strengthen Regional Integration
- Component 2: Strengthen National Policy and Institutional Framework
- Component 3: Strengthen National Physical and Social Investments
- Component 4: National Coordination

COMPONENTS FINANCED BY THE FUND

NDF will finance technical assistance and works identified in Benin's multi-sectoral investment plan for integrated coastal zone management and adaptation under Components 3 of Benin's ResIP.

The proposed intervention is a priority action in Benin's coastal multi-sectoral investment plan and NDC. The loan to Benin will be used to protect and to preserve the physical integrity of Grand Popo lagoon (village Gbèkon "Place de 10 janvier") and wetland in South West Benin, which is an extremely vulnerable and critical hotspot, and to avoid any potential dramatic environmental, social or economic impact on the area by:

- a. Providing technical assistance for feasibility studies, detailed design, tender preparations and supervision of works for the protection and restoration of the land strip;
- b. Carrying out environmental and social impact studies to safeguard the physical investments; and
- c. Implementation of a combination of measures identified under subcomponent a. for protection of this segment of the land strip, potentially including dredging, banks fixation, revetment, fixation with vegetation of the shores and other land development measures.

NDF will fund the detailed feasibility study; the social and environmental impact study, and the construction and commissioning of the planned infrastructure investments

The investments will focus on river course stabilisation in an extremely vulnerable and critical hotspot to avoid dramatic environmental, social and economic impact and to preserve the physical integrity of Grand Popo lagoon and wetland in South West Benin. The interventions will comprise a combination of measures for protection of this segment of the land strip potentially including dredging, banks fixation, revetment, fixation with stabilisation of the shores and other land management measures.

The project shall benefit local livelihoods, economic activities and preserve important infrastructures such as the coastal road. The Grand Popo is also an important biodiversity area and the coastal wetland continues into neighbouring country Togo.¹ Nature-based solutions for flood risk management will make use of existing ecosystems, native species, and comply with basic principles of ecological restoration and conservation.

The NDF investments will be complemented by other investments in the coastal zone. For example, the Global Environmental Facility (GEF) will, in addition to the World Bank's loan under WACA Benin, finance complementary activities strengthening local involvement including NGOs and ecological safeguarding in the broader Mono River delta zone, and synergies are foreseen between NDF's and GEF's activities.

The activities for Benin build on NDF's experience from protecting ecosystems and infrastructure implemented in other NDF projects, as well as on the NDF-financed studies on the costs of coastal environmental degradation, multi-hazard risk assessment and cost-benefit analysis as well as on quantitative evaluation of sedimentary movements and river bank stabilisation works.

¹Chenal de Gbaga ecosystem, located in the transboundary Mono River basin.

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The following contracts are foreseen to be financed by NDF:

No. of contracts	Description	Budget (EUR)
1	Technical assistance services for comprehensive technical studies such as feasibility studies and detailed design for works for the restoration of the lido, environmental and social impact studies relating to the physical investments; as well as for supervision relating to the works	1,300,000
1	Works: Implement measures for protection of this segment of the land strip including reforestation, dredging and other land development measures	2,100,000
NA	Unallocated amount	600,000
	TOTAL	4,000,000

There will be no Special Advance for the project.

IMPLEMENTATION

The Project will be implemented over 5 years beginning in the second quarter of 2018.

The Implementing Agency (IA) for NDF's loan to Benin will be the Ministry of Environment and Sustainable Development (MEDD).

For the WACA ResIP, the Regional Implementation Support Unit (RISU) will coordinate activities at regional level, and provide implementation support services to the countries, supervised by a Regional Steering Committee. National Project Implementation Units will be established in each country embedded into existing institutions and reporting to a National Steering Committee. Project Implementation Manuals are being prepared for each country. At the regional level, a Regional Project Implementation Manual will be prepared that reflects the rationale for regional integration, and described the modalities at regional level for implementation, including the Regional Steering Committee.

IUCN will be one of the institutions playing a key role: it will prepare the regional operational manual and technical guidance notes for WACA ResIP based on the body of knowledge existing in WACA already and from regional expertise available at IUCN. IUCN will also establish the RISU providing technical support to project implementation in the six WACA countries under the project, and managing contracts for regional contractors. RISU is likely to be based in Dakar, Senegal. The Ecological Monitoring Centre (CSE) will be contracted to lead in technical matters related to coastal observatory.

PROJECT WORK PLANS, MONITORING, REPORTING AND EVALUATION

The Executing Agency shall prepare and furnish to NDF for NDF's consideration, not later than November 30 in each calendar year, an AWP&B setting forth activities financed by NDF for the following year. The AWP&B concerning the activities financed by the Fund shall be part of the overall AWP&B that the Executing Agency submits to the Lead Agency, but the

NDF financed activities should be clearly marked as NDF activities and will be reviewed by the NDF, in consultation with the Lead Agency. The AWP&B concerning the activities financed by NDF shall thereafter be implemented as approved by NDF and the National Steering Committee.

The Executing Agency shall furnish to NDF each progress report not later than one (1) month after the end of each calendar semester, covering the calendar semester. The progress report concerning the activities financed by the Fund shall be part of the overall progress report that the Executing Agency submits to the Lead Agency, but the NDF financed activities should be clearly marked as NDF activities in the report.

A monitoring and evaluation manual will be prepared, including, among other things, the means of channelling the results and outcomes from the country level to the regional level. Reporting on progress will be made public on a website to ensure full transparency in project execution.

The monitoring and evaluation of results of the NDF components in Benin will be integrated in the arrangement of the WB WACA ResIP through the PIUs. NDF will monitor progress towards the results with the help of the reports and monitoring and supervision missions. The monitoring and evaluation may be carried out by NDF, NDF-contracted consultants and also jointly or separately by/with the World Bank.

The World Bank's environmental and social safeguards will be applied to the NDF-financed activities. The consultants financed by NDF will be requested to ensure the necessary environmental and social clearance of the interventions.

The NDF-funded components in Benin relates to the stabilisation of the Mono River course in the delta area to stop the river from breaking through a very important land strip between the river and the sea. This breach is likely to happen if no action is taken. The width of the land strip in a particularly vulnerable area is constantly shrinking due to erosion in the river bend and the instability is exacerbated by the hydrological extremes due to climate change. The objective of the NDF project interventions is to protect the people and environment against these threats by stopping the river from taking a short-cut through this important land strip thus changing the environmental, social, cultural, and livelihood conditions dramatically. The NDF-funded mitigation measures will include dredging and green interventions like tree-planting and revegetation. The environmental, social and overall risk rating of Civil Engineering category activities in sensitive locations is generally rated High.

A main project risk might be if the project is poorly designed or if the implementation work accidentally leads to bank rupture (excavator operator making a wrong move, e.g.). Other possible negative impacts of the work include temporary water quality disturbances like high water turbidity (high concentration of suspended solids) during dredging (short-term impact on tourism, fisheries, etc.) and the risk if the green protection applied non-indigenous harmful tree/plant species. To mitigate the above, the project will take several precautions including thorough investigations and feasibility studies before the detailed design, transfer the precautions into contract conditions for the contractors, and ensuring high quality project implementation supervision. In addition, an independent social and environmental impact assessment (SEIA) will be carried out to safeguard the NDF-funded component.

The WACA project plans to undertake analysis to identify project- relevant gaps between males and females. Furthermore, specific actions to address these gender gaps will be identified to improve women or men's empowerment. Indicators are included in the Results Framework to monitor outcomes from these actions.

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PROCUREMENT

The World Bank's procurement guidelines from July 2016, revised November 2017, will apply. Reference is also made to the Fund's General Procurement Guidelines. The procurement provisions of this Annex 2 take preference over the World Bank's procurement guidelines in case of conflict of wording or figures between the two.

Procurement Methods

The consultancy contracts to be financed by NDF shall be procured using the quality and costs based selection method (QCBS) with a technical:financial scoring ratio of 80:20.

The works contracts to be financed by NDF shall be procured through National Competitive Bidding.

The MEDD shall provide NDF with the Request for Expressions of Interest and Request for Bids before publication, in order to allow NDF to publish at its website simultaneously with the MEDD.

Prior review will apply all procurement processes. Please see below regarding requirements for No Objection from NDF.

Additional Provisions

The following additional provisions will apply:

- (a) Eligibility: The eligibility of bidders to participate in a procurement process and to be awarded a contract financed by the Fund shall be as defined under Section I of the Procurement Guidelines; accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the Fund for reasons other than those provided in Section I of the Procurement Guidelines.
- (b) Domestic Preference: No domestic preference may be applied in bid evaluation on the basis of bidder nationality, the origin of goods, services or labour, and/or preferential programs.
- (c) Registration and Inclusion in the Reference List of Suppliers/Contractors: Registration and inclusion in the reference list shall not be used as a basis for or as a substitute for assessing the bidders' qualifications.
- (d) Bidding Documents: Procuring entities shall use the appropriate standard bidding documents acceptable to the Fund, which documents shall be prepared to ensure economy, efficiency, transparency, and broad consistency with the provisions of Section I of the Procurement Guidelines.



- (e) Bid Opening: All bids must be opened in public immediately on the deadline set for the bid submission at the date, time and place stipulated in the tender documents. Bids shall be opened in public, that is, the bidders or their representatives may attend the bid opening. The tender committee shall announce the names of the bidders and the price offered by each bidder. A record of the bid opening shall be prepared and shall contain the names of the bidders, bid price, discounts and the names and signatures of persons in attendance and the organizations they represent. A copy of this record shall be promptly sent to the Fund and to all bidders who submitted bids on time.
- (f) Rejection of Bids and Re-bidding: All bids (or the sole bid if only one bid is received) shall not be rejected, negotiations shall not take place at any time with a bidder, the procurement process shall not be cancelled, or new bids shall not be solicited without the Fund's prior written concurrence.
- (g) Contract Modifications: The Borrower shall obtain the Fund's no objection before agreeing to: (i) a material extension of the stipulated time for performance of a contract; (ii) any substantial modification of the contract scope of services or other significant changes to the terms and conditions of the contract; (iii) any variation order or amendment; or (iv) the proposed termination of the contract. A copy of all signed contract amendments shall be provided to the Fund for its record.
- (h) Bid and Contract Securities: All bid and contract securities shall be in the format specified in the bidding documents.
- (i) Fraud and Corruption: The bidding documents and contract shall include the NDF Anticorruption Policy either by reference or as an annex.
- (j) Inspection and Audit Rights: In accordance with the Procurement Guidelines, each bidding document and contract financed out of the proceeds of the Financing shall provide that bidders, suppliers and contractors, and their subcontractors, agents, personnel, consultants, service providers, or suppliers, shall permit the Fund to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Fund or the Lead Agency. Acts intended to materially impede the exercise of the Fund's inspection and audit rights provided for in the Procurement Guidelines constitute an obstructive practice as defined in the Procurement Guidelines.

NDF's review and formal No Objection, in writing (by way of email, letter or fax, as preferred by the IA) is required for terms of reference, requests for expression of interest, expression of interest evaluation reports including the proposed short list, requests for proposals, proposal evaluation reports, bidding documents, bid advertisements, bid evaluation reports, and negotiated draft contracts. In addition, any provisions in paragraph 6 of the Nordic Development Fund General Procurement Guidelines for Projects (November 2017) shall apply unless otherwise agreed with the Fund.

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Procurement thresholds

Expenditure Category	Contract Value Threshold (EUR)	Procurement Method	Contracts Subject to Prior Review (EUR)
1. Works	Above EUR 3,000,000	ICB	All contracts
	Below EUR 3,000,000	NCB	Above EUR 100,000
	Below EUR 50,000	Shopping	First two contracts
2. Goods	Above EUR 300,000	ICB	All contracts
	Below EUR 300,000	NCB	Above EUR 50,000
	Below EUR 30,000	Shopping	First two contracts
3. Non-consulting Services	Above EUR 200,000	ICB	All contracts
	Below EUR 200,000	NCB	Above EUR 40,000
	Below EUR 30,000	Shopping	First two contracts
4. Consulting Services with Firms	Above EUR 100,000	QCBS	All contracts
	Below EUR 100,000	Qualifications/Other	Above EUR 30,000
5. Consulting Services with individuals		Individual	Above EUR 15,000
6. All types of contracts	All contracts	Single-source/Direct contracting and TORs	Above EUR 15,000

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Annex 3

ELIGIBLE EXPENDITURES

The Financing shall go towards the following types of expenditures, which are the Eligible Expenditures unless otherwise agreed in writing between the NDF and the Borrower:

- 1) Technical assistance services supporting national observatory and the GIS and early warning systems
- 2) National observatory, GIS and early warning equipment (including hardware and software IT equipment for processing, appropriation, archiving, and sharing of geographical and meteorological data and systems; telecommunication equipment; marine monitoring equipment; development of platform for voice and SMS alerts)
- 3) Works: refurbishment and renovation of office premises