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PARTNERSHIP AGREEMENT

relative to the Action :

« Intervention ENABEL-PNUD-UNCDF dans le cadre du Programme INTEGRA
Programme d'appui à l'intégration socio-économique des jeunes en République de
Guinée-INTEGRA ENABEL

République de Guinée

Ref. UE - TF05-EUTF-SAH-GN-01

Enabel : GIN 17 009 1T »

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This Partnership Agreement, hereinafter “the Agreement” is made between:

Enabel s.a., rue Haute 147, established at 1000 Bruxelles, hereinafter “the Organisation”,

and

United Nations Development Program (UNDP), established at One UN Plaza New York, NY 10017), United States of America, hereinafter a “Co-Delegatee”,

and

United Nations Capital Development (UNCDF), established at Two UN Plaza, 26th floor, New York, NY, 10017, United States of America, hereinafter a “Co-Delegatee”,

Individually the “Party” or the “Delegatee” and collectively the “Parties” or the “Delegates”,

Which have agreed to the following:

Whereas, the Delegates have agreed to cooperate in order to implement the Action called “Intervention ENABEL-PNUD-UNCDF dans le cadre du Programme INTEGRA; Développement socio-économique et création d’emplois sur l’axe Conakry – Labé.” (hereinafter the “Action”).

Whereas, the Delegates have therefore signed a Co-Delegation Agreement TF05-EUTF-SAH-GN-01 on **29 of June 2018** (hereinafter “the Head Contract”) with the European Union represented by the European Commission (hereinafter “the Contracting Authority”);

Whereas, the PAGO2 contractual framework (including its templates, annexes and any amendments hereto) stipulates the undertaking of the Action, this Partnership Agreement governs the Organisation and Co-Delegates’ collaboration in relation to the Action.

NOW THEREFORE, the Parties hereto enter into the following Partnership Agreement:

1. Definitions

Any word(s) or expression(s) appearing in this Agreement shall have the meaning ascribed to them herein, unless such word(s) or expression(s) are defined in the Head Contract, in which case they shall be interpreted in accordance with the definition of such word(s) or expression(s) included within the Head Contract. Any definition repeated in this Clause 1 has been so repeated for ease of reference only.

- **Action Intellectual Property Rights** – means all Intellectual Property Rights that arise or are obtained or developed by either Delegatee, or by a contractor on behalf of either Delegatee, in respect of the Materials in the course of or in connection with the Action.
- **Activities** – means all activities which each Delegatee is required to implement pursuant to the present Agreement and as set out in Annex I of the Head Contract and/or (to be determinate) in the division of Labour as defined in appendix B of this Agreement
- **Background IPR** – means any Intellectual Property Rights (other than Action IPR) belonging to either Delegatee before the date of this Agreement or not created in the course of or in connection with the Action (and for the purposes of this Agreement, Background IPR excludes each of the Delegates' Marks).
- **Confidential Information** means any information which has been clearly marked as confidential by any Delegatee.
- **Marks** – means each aspect or element (such as colour, design, picture, symbol, typeface) of a brand that cannot be expressed in words.
- **Materials** – refers to all inventions, designs, information, know-how, specifications, formulae, data, processes, methods, techniques, materials and content, including any improvements in the same, in connection with the Action (as defined below).

- **Partnership Body(ies)** – means a/any governance body/bodies for the implementation of the Action as described in Clause 5 (Governance) of this Agreement.
- **Representative** - means the person chosen by a Delegatee to represent it.
- **Tasks** - means administrative and financial obligations of the Delegatees as set out in the Head Contract and this Agreement
- **Third Party IPR** – means any Intellectual Property Rights not belonging to a party to this Agreement but used by a third party in the creation of the Project materials and/or in the course of or in connection with the Project.

2. Purpose

Without prejudice to the provision of the Head Contract, the purpose of this Agreement is to set out the respective roles and responsibilities of each Delegatee in the implementation of the Action and the modalities of cooperation (including the division of tasks and sharing of the financial resources among Delegatees).

3. Entry into force and duration

3.1. This Agreement shall enter into force on the date when the last party has signed it.

3.2. This Agreement shall continue (unless terminated in accordance with this Agreement and the Head Contract) at least until the End Date as referenced in Article 1 of the Head Contract and until the last payment transfer between the Organisation and the Co-Delegatees has been made (whichever comes last and without prejudice to any litigation or otherwise unsettled matter which may require use or access to any documents or information relating to the Action, and of which the organisation shall inform each Co-Delegatee).

4. Roles and responsibilities of the Delegates

4.1 General principle of cooperation

In carrying out their respective part of the common Action as set forth in the Head Contract, the Delegates will work together in the spirit of trust, loyalty and fairness, albeit acknowledging the specific circumstances, environment and modalities for implementation of the Action.

The Delegates will act as reliable partners both towards the Contracting Authority and amongst each other, being dedicated to the common goal of successfully implementing the Action together.

4.2 General obligation of the Delegates

4.2.1. The Delegates undertake to implement the Action as agreed and set out in the Head Contract and in a proper and timely manner so as not to affect the obligations of the other Delegates in accordance with the provisions stated in the Head Contract and in this Agreement. In relation to the recovery actions mentioned in Article 6 of Annex II A (Provisions applicable only to Co-Delegation Agreements) and Articles 13.2 and 15 of Annex II (General Conditions for PA Grant or Delegation Agreements), the Delegates/Co-Delegates shall only reimburse those amounts effectively recovered and not full amounts.

4.2.2. Each Delegate warrants to the others that:

- all information, data and materials provided by it to the others pursuant to this Agreement will be, to the best of its knowledge, accurate and complete in all material respects, and it is entitled to provide the same to each of the Delegates without recourse to any third party;
- it will comply with all relevant applicable laws and regulations in relation to corruption and fraud, child protection, and equality, diversity and inclusion;
- except as expressly provided in this Agreement, there are no conditions, warranties or other terms binding on the parties with respect to the clauses contemplated by this Agreement. Any condition, warranty or other term in this

regard which might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is, insofar as it is lawful to do so, hereby excluded.

4.3. Specific obligations of the Co-Delegates

4.3.1. The Co-Delegates shall perform all tasks assigned to them respectively as described in the Head Contract, in particular Article 3 of Annex II.a of the Head Contract, and in this Agreement.

4.3.2. Each Co-Delegatee shall:

- adhere to the governance structure set out hereinafter to ensure that activities are delivered and actions taken as required;
- act in a timely manner in order to fulfil the contractual obligations under this Agreement and the Head Contract and respond to reasonable requests from the other Delegates within a reasonable period;
- ensure sufficient and appropriately qualified resources are available and authorised to fulfil its responsibilities set out in this Agreement and the Head Contract;
- not cause, by its actions, inactions or delay, any other Party to breach the terms of the Head Contract.

4.3.3 Each Co-Delegatee is responsible for supplying without delay all documents and information in order for the Organisation to fulfil the obligations mentioned in Article 2 d) of Annex II.a of the Head Contract.

4.4. Specific obligations of the Organisation

The Organisation shall be the intermediary between the Co-Delegates and the Contracting Authority and shall perform all tasks assigned to it as described in the Head Contract, in particular Article 2 of Annex II.a of the Head Contract, and in this Agreement.

Notwithstanding Article 2 of Annex IIa of the Head Contract, the Organisation shall be responsible for:

- keeping available and updated an address list of Co-Delegates and other relevant contact persons;
- collecting reports, reviewing their coherence and submitting them, other deliverables (including financial statements and related certifications where so applicable) and specific requested documents to the Contracting Authority;
- transmitting documents and information connected with the Action to the relevant Parties concerned;
- administering the financial contribution of the Contracting Authority and fulfilling the financial tasks described in Clause 7;
- providing, upon request, the Co-Delegates with copies or originals of documents that are in the sole possession of the Organisation when such copies or originals are necessary for the Parties to present claims.

4.5. Involvement of third parties

4.5.1. A Delegatee that enters into a subcontract or otherwise involves third parties in the Action shall remain responsible for carrying out its relevant part of the Action and for such third party's delivery.

4.5.2. Each Delegatee shall ensure that the involvement of third parties does not affect the rights and obligations of the other Delegatees under this Agreement and the Head Contract.

5. Governance

5.1. General structure

The organisational structure is described in Annex 1 section 6.2 of the Head Contract. Moreover it shall comprise the following Partnership Bodies:

- the Governing Board; and
- the Managing Team (called in the DTA "cellule de gestion de projet").

5.2 Governing Board

5.2.1. The Governing Board shall be made up of the following representatives nominated by each of the Delegatees:

- Enabel : Resident Representative.

- UNCDF: Country Director or Deputy Executive Secretary
- UNDP: Country Director.

In the event that a representative is unable to attend any scheduled meetings of the Governing Board, the concerned Delegatee will nominate a replacement Representative if necessary.

5.2.2. The Governing Board shall be responsible for drafting and agreeing the strategies and decision making in relation to the overall management of the Action and the finding of amicable solutions for any unresolved disputes between the Delegatees relating to the execution of the Action.

5.2.3. The Governing Board shall undertake, and decide on, the following matters:

- reviewing the progress of the Action;
- deciding on principles for effective communication;
- agreeing reporting modalities, including proper timing;
- agreeing on adequate management procedures, quality standards and quality for the Action;
- proposing to the EU the entry of new Delegatees and departure of existing Delegatees;
- deciding in relation to the reassignment of a terminating Delegatee's allocated Activities;
- agreeing on the Action and/or a Delegatee termination;

5.2.4. The representative of the Organisation shall chair the Governing Board (the "Chairperson") and shall be responsible for the convening of meetings, preparation and distribution of the agenda and minutes for meetings of the Governing Board.

5.2.5. The Governing Board shall meet at the start of the Action and at least once a year thereafter. Meetings of the Governing Board will be convened with at least 14 days (unless in case of exceptional circumstances) written notice in advance by the Chairperson. Invitation to the meetings will be done in writing and transmitted by fax, by e-mail or by other electronic communication means. The invitation must include an agenda for the meeting.

5.2.6. Decisions are recorded in the minutes of the meeting. Decisions shall be taken by a consensus. If a consensus is not reached decisions shall be made by the majority of 2/3 of

the votes, each Delegatee having one vote. In case of a tie, the Organisation shall have the casting vote.

5.2.7. To be valid, meetings of the Governing Board require the presence of all Delegatees.

5.2.8. In duly justified and exceptional circumstances the Delegatees have the right to veto.

5.3. Managing Team

5.3.1. The Managing Team shall be made up of the following representatives:

- Enabel: program manager
- UNCDF: Christel Alvergne and Maria Perdomo
- UNDP: program manager
 - Deputy Country Director – Program
 - Team Leader, Economic Transformation and Sustainable Development - Cluster
 - Team Leader, Economic Governance and Development - Cluster

5.3.2. The Managing Team shall be responsible for the overall management of the Action. It will ensure the smooth implementation of the Action and that all reasonable efforts are focused towards the Action Objectives.

5.3.3. The Managing Team shall undertake the following matters:

- monitor progress against Action Objectives, as defined in Annex I, Annex III and Annex VI of the Head Contract, and this Agreement;
- ensure effective communication;
- recommend changes to allocated Activities for endorsement by the Governing Board (when required the Governing Board will then contact the Contracting Authority);
- consolidate the Action activity reports, periodic reports;

5.3.4. The representative of the Organisation shall chair and be responsible for the convening of meetings, preparation and distribution of the agenda and minutes for meetings of the Managing Team.

5.3.5. The Managing Team shall meet at least every 3 months, unless in case of exceptional circumstances. Meetings of the Managing Team will be convened with at least 7 days written notice in advance by the Chairperson. Invitation to the meetings will be done in

writing and transmitted by fax, by e-mail or by other electronic communication means. The invitation must include an agenda for the meeting.

6. Payments

6.1. Budget - Please refer to **Annex III of the Head Contract**.

6.2. Payments to Co-Delegates are the exclusive task of the Organisation.

6.3. The Organisation will receive payments from the Contracting Authority. It undertakes to transfer the appropriate sums to the respective Co-Delegates with minimum delay, but not later than thirty days from its receipt from the Contracting Authority.

6.4. The Organisation shall notify each of the Co-Delegates promptly of the date and amount transferred to its respective bank account and shall give the relevant references.

6.5. Bank account details of each Co-Delegatee shall be provided to the Organisation within fifteen days of each Co-Delegatee's signature of this Agreement.

6.6. For subsequent years, payments will be subject to the presentation of the justification which will consist of a financial and narrative progress report on implemented Activities, and a payment request using the template given in Appendix C. The Management Declaration and the Audit Opinion shall be provided in accordance with the Head Contract.

6.7. Indirect costs - Each Delegatee shall be entitled to a flat rate remuneration of 7% on their eligible costs.

7. Implementation of the Action

7.1. Reporting, Monitoring, Evaluation and Audits

7.1.1. Financial and narrative report per activity will be provided by each Co-Delegatee to the Organisation annually and upon request by the Organisation, without undue delay.

7.1.2. With reference to 5.2.3, the Governing Board will decide during its first meeting on

the reporting modalities, including proper timing.

7.1.3. All reports will follow a format developed and agreed upon by the Delegates.

7.1.4 Each Delegatee shall perform the monitoring and evaluation of its own activities. Where possible, under the guidance of the Governing Board, Delegatees shall endeavour to produce a joint document analysing the progress of the Action. .

8. Communication – Branding – Visibility

Parties recognise the need for and commit to take all appropriate measures to publicise the fact that the Action has received funding from the European Union and from other sources as it may be. The Action's appropriate communication and visibility strategy is laid down in the Annex VI of the Head Contract which parties undertake to implement. Co-Delegatees shall report their visibility & communication activities and outputs to the Organisation and the latter shall compile all relevant information into its annual and final reports submitted to the Contracting Authority.

Where deemed appropriate, the Governing Board may agree on the common identity design of this action (incl. the set of logos).

9. Intellectual Property Rights

9.1. All Background IPR are and shall remain the exclusive property of the Delegatee owning it. The Co-Delegatee shall own the intellectual property on the deliverables to be made under the Agreement and identified as Action IPR.

9.2 Each Party warrants to the other Parties that its Background IPR does not, so far as it is aware, infringe the rights of any third party and none of its Background IPR is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings.

9.3 Each Party hereby grants to the other Parties an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Action IPR and the Party's Background IPR in, and to the extent necessary for, the performance of the Action.

9.4. Subject to those documents marked as confidential by the Parties and to the Parties 'regulations, rules and procedures, Delegates agree that the documents created, developed or used during the implementation of the Action shall be published and licensed to third parties under the terms of a Creative Commons Attribution 4.0 International Public License.

9.5. Each Delegatee is responsible for obtaining any licences, permissions or consents in connection with any Third Party IPR which that Delegatee introduces into the Action so that any Delegatee (including the Contracting Authority) can make use of any Action results (such licences, permissions or consents to be in writing, copies of which the relevant Delegatee shall provide to the other Delegatees on request).

9.6. Nothing in this Agreement shall prevent any Delegatee from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that it does not result in a disclosure of any other Delegatees' Confidential Information or an infringement of Intellectual Property Rights.

10. Data protection and confidentiality

10.1. The Parties shall ensure an appropriate protection of personal data in accordance with the applicable relevant laws and regulations.

10.2. Unless otherwise agreed and notwithstanding Article 6 of Annex II of the Head Contract, Delegates may use Confidential Information only to implement this Agreement and the Action. No Confidential Information may be used by a Delegatee for any purpose other than the performance of obligations or exercise of rights under this Agreement. Each Delegatee shall ensure that all members of their teams or third parties are aware of its confidentiality obligations under this Agreement and are subject to similar obligations if are using the Confidential Information.

11. Breach

11.1. Notwithstanding Clause 4.1 and Clause 5.3.2, in the event that the Governing Board identifies a breach by a Delegatee of its obligations under this Agreement, the Organisation

or, if the Organisation is in breach of its obligations, the Co-Delegatee appointed by the Governing Board, will give formal notice to such Delegatee requiring that such breach be remedied within 30 calendar days from the date of receipt of the written notice by the Delegatee.

11.2. If such breach is substantial and is not remedied within that period or is not possible to remedy, the Governing Board may decide to declare the Delegatee to be a defaulting Delegatee (hereafter the “Defaulting Delegatee”) and to decide on the consequences thereof which may include proposing to the Contracting Authority to terminate the participation of the Defaulting Delegatee in the Action and the Head Contract.

12. Liability

12.1. Each Delegatee shall be liable for the delivery of the part of the Action that is attributed to it in the Head Contract and in this Agreement.

12.2. Nothing in this Agreement shall exclude or restrict the liability of any Party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be limited under any applicable law.

12.3. Subject to Clause 12.2, no Party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement.

12.4.. Each Delegatee shall be liable for all direct losses, costs, and liabilities suffered or incurred by the one or more Delegatees as a result of the Delegatee:

- failing to perform its obligations under this Agreement and/or Head Contract; or
- causing, by its actions, inactions or substantial delays the other Delegatee(s) to breach the terms of this Agreement and/or Head Contract.

13. Termination

13.1. In case the Contracting Authority terminates or partly terminates the Head Contract

in accordance with Article 13 of the Head Contract General Conditions, the Organisation shall, on receipt of the notice of termination, provide each Delegatee with written notice to such effect for this Agreement.

13.2. The Delegatees may together, pursuant to decision by consensus reached by the Governing Board meeting, require this Agreement to be terminated. In such case, the Organisation shall provide notice to the Contracting Authority which shall include the justification for termination and the effective date of the termination, as per Article 13 of Annex II of the Head Contract.

The Organisation will also provide notice to each Co-Delegatee for the termination of this Agreement.

13.3. Notwithstanding clause 4.1 and without prejudice to any other provision of this Agreement, and with due regard to the principle of proportionality, the Governing Board may decide termination of the Agreement in respect to one of the Delegatees if:

- a) the performance of the Action by the Delegatee is delayed, hindered or prevented by a Force Majeure Event for a period in excess of 90 days
- b) commits any material breach of any of the terms of this Agreement and that breach (if capable of remedy) is not remedied within 30 days of notice being given requiring it to be remedied (and where such breach is not capable of remedy, the Agreement will be terminated with immediate effect);
- c) is guilty of misrepresentation or submits false or incomplete statements to obtain the payment or provides reports that do not reflect reality to obtain or keep the payment without cause;
- c) is bankrupt or being wound up, or is subject to any other similar proceedings;
- d) is guilty of grave professional misconduct proven by any justified means;
- e) has committed fraud, corruption or any other illegal activity;
- f) fails to comply with the reporting obligations in accordance with Article 3.15 from the Head Contract General Conditions.

13.4. If one Delegatee wants to withdraw from the Action, the Organisation will inform the Contracting Authority of the Delegatee's decision and will propose – in agreement with the other Co-delegatees – a reallocation of the tasks and responsibilities of the Co-Delegatee who wants to withdraw.

13.5 In case of termination, the Organisation may demand full repayment of any amounts

paid in excess of the final amount determined in accordance with Article 20 of the Head Contract General Conditions after allowing each Co-Delegatee to submit its observations. The Organisation will share the observations with the Contracting Authority which will decide upon the final amounts to be repaid.

13.6. Termination of this Agreement, however it arises, shall not affect or prejudice the accrued rights of the Parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

14. Applicable law and settlement of dispute

14.1. The Parties shall endeavour to amicably settle any dispute controversy or claim arising out of, or relating to this agreement or the breach; termination or invalidity thereof.

14.2. If no amicable solution can be found within the Governing Board, the dispute shall be submitted to the senior management of the respective Delegatees.

14.3. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with UNCITRAL Conciliation Rules then obtaining, or according to such procedure as may be agreed between the parties. Any dispute, controversy or claim between the Parties arising out of or relating to this agreement or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph within (60) sixty days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The arbitral tribunal shall have no authority to award punitive damages. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute. Nothing in or relating to this Agreement shall be understood as a waiver of the immunities and privileges of UNDP and UNCDF as an integral part of the United Nations.

15. Miscellaneous

15.1. In the event of conflict between the terms of this Agreement and the Head Contract,

the terms of the latter shall prevail.

15.2. No variation of this Agreement shall be valid unless it is in writing and signed by a Representative of each Delegatee.

15.3. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Delegatee to whom the waiver is addressed and in circumstances for which it is given.

15.4. This Agreement does not create any rights or benefits enforceable by any person not a Party to it.

15.5. Nothing in this Agreement is intended to, or shall operate to, create a legal partnership between the parties or any of them (notwithstanding the use of the term “Partnership” in the Agreement), or to authorise any Party to act as agent for another, and no Party shall have authority to act in the name or on behalf of or otherwise to bind another in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power) and no Party shall incur any expenditure in the name of or for the account of another.

15.6. All communications, reports and information shall be submitted in french. Any translations of the Agreement or any communications, reports or information shall not have precedence over the versions done in the language agreed under this Clause 15.6.

15.7. If any provision of this Agreement (or part of any provision) is found to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

15.8. Only those elements/documents that are explicitly listed to form part of this agreement are to be considered forming part of this Agreement. Each Party confirms and acknowledges that it has not been induced to enter into this Agreement by, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) not expressly incorporated into. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

16. Appendices

16.1 The following annexes shall be considered as an integral part of this Agreement:

- Appendix A: Template for payment request by the Co-Delegates to the Organisation(supplied at a later stage)

Done in as many copies as Parties, each acknowledging by its signature that it has received its own original copy.

IN WITNESS whereof the Parties or their duly authorised Representatives have entered into this Agreement on the date set out above.

Signed by Evert WAUTERS, duly authorised Representative of ENABEL Place Date
Signed by Lionel LAURENS, duly authorised Representative of UNDP Place <i>Conakry</i> Date <i>13/07/2018</i>  
Signed by Judith KARL, duly authorised Representative of UNCDF Place <i>New York</i> Date <i>20/07/2018</i>  

