



May 2007

### **Contribution Agreement**

The State of the Netherlands, represented by the Minister for Development Cooperation, legally represented in this matter by its Ambassador, Mrs. S.T. Blankhart, in the Republic of Costa Rica, hereinafter referred to as the Minister, on the one hand,

**and**

Fundación Fundecooperación para el Desarrollo Sostenible, a duly registered, organized and existent non-profit foundation in accordance with the Laws of the Republic of Costa Rica, with offices at San José, Republic of Costa Rica, legally represented in this matter by the President of the board of Directors, Mr. Ronald Vargas Brenes, hereinafter referred to as Fundecooperación on the other hand,

#### **CONSIDERING**

that the Joint Committee on the Sustainable Development Agreements during its last meeting on 18 and 19 May 2005, established the Program for South-South Cooperation on Sustainable Development (hereinafter referred to as PSC) as laid down in the Agreed Minutes (appendix 1) done by the Heads of Delegations of the Republic of Benin, the Kingdom of Bhutan, the Republic of Costa Rica and the Kingdom of the Netherlands at The Hague on 19 May 2005 and the Regulations of the PSC (appendix 1) attached to the Agreed Minutes;

that the Minister is prepared to make a financial contribution of USD 13,253,012.00 to the PSC which will be administered by Fundecooperación on the basis of the Regulations attached to the Agreed Minutes;

that Fundecooperación shall use the contribution in accordance with the Regulations and subject to the conditions mentioned hereafter;

that the Regulations specify a central role for the Management Board (hereinafter referred to as MB) for which Fundecooperación will act as secretariat on behalf of the three partner countries;

that the Minister and Fundecooperación have signed on the 3<sup>rd</sup> of December 2004 a Fiduciary Contract with Banco Interfin S.A. (Interfin Bank) in San José in Costa Rica in which a special provision was made, in Article 7, for the deposit and administration of the PSC - at the time called the Program for Reciprocal Projects;

that in said Article 7 Reciprocal Projects should read as PSC and Evaluation and Approval Committee (EAC) as MB by virtue of the Agreed Minutes and that such reading has been clarified with the Fiduciary Bank;

that the Minister will deposit its contribution under the Contribution Agreement into a separate account and administration number to be created under a Fiduciary Contract in order to enhance transparency and as a confidence building measure;

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that Fundecooperación shall take decisions with regard to the management of the Fiduciary Contract in accordance with the decisions taken in the MB and will report accordingly to the MB;

THEREFORE, in reliance upon and in consideration of the mutual representations and obligations hereunder, the parties AGREE AS FOLLOWS:

1. The PSC, financed from the contribution under this agreement, shall be implemented under the responsibility of Fundecooperación in accordance with the above-mentioned Regulations and in respect of the responsibilities of the MB and the National Mechanisms (hereinafter called NMs) at the national level as specified in the Regulations. These Regulations form an integral part of this agreement. The Minister shall bear no responsibility or liability whatsoever in respect of a third party as regards the implementation of this agreement. The Minister's contribution has been allocated activity no. 14625 in the Minister's records.

2. Fundecooperación is responsible for maintaining sound management procedures and keeping proper accounts. Any agreements with third parties regarding the implementation of the activities to be financed from the contribution shall be laid down in writing.

Fundecooperación shall keep an inventory of items purchased partly or entirely with the funds made available by the Minister. When purchasing goods and services, Fundecooperación shall consistently aim to obtain the best price-quality ratio and, where practicable, call for competitive tenders in which all candidates are treated equally in similar cases.

For the administration of the PSC funds, overhead costs will be made available as specified in the Regulations under operational support and as budgeted and approved under the Multi-Year Plan (hereinafter called MYP), (Appendix 2) and Start-Up phase Half Year Plan (Appendix 3). These overhead costs will not exceed 5% of the real project cost of each project year. The overhead costs shall be spent in accordance with that stated in the MYP and the Annual Plan. Within this 5% there is an amount of 5% of unforeseen costs. The cost made for the budget unforeseen has to be approved beforehand by the Minister.

3. The Contribution Agreement for the PSC Program shall run from May 15, 2007 to December 31, 2010. All the project activities will have to be finished by November 15, 2010. The period from November 15, 2010 until December 31<sup>st</sup>, 2010; may exclusively be used to finish the administration of PSC, including the external accountant's reports.

4. At the start of the PSC a MYP has been drawn up in accordance with the Regulations. The MYP in addition contains the first AP for the period ending November 15, 2007. The MYP has been approved by the Minister. The MYP forms the basis for the activities to be carried under this agreement. Subsequent APs will be submitted to the Minister for information only within two month after approval by the MB.

5. Fundecooperación shall submit a report to the Minister for the first six month period from May 15, 2007 to November 15, 2007 and shall be submitted before December 31<sup>st</sup>, 2007. Within four and a half months from the end of each project year, an annual report shall be presented. The report shall consist of a narrative and a financial report, accompanied by an auditor's report. The auditor's reports have to include a sub-auditor's report of Benin and Bhutan in conformance with the IAS standards (see appendix 4).

The narrative annual report shall include an overview of activities, notably in relation to outputs and to the activities as referred to in the AP. The report shall indicate how they contribute to objectives, results and

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outcomes referred to in the PSC MYP. The report shall list the staff in service and the equipment acquired for the PSC.

The financial annual report shall include a report on (multi-year) commitments on approved projects as well as on payments in the year of reporting, a budget, an overview of the party's estimated and actual revenue and expenditure, an overview of the cash flow including other income (interest, other donations etc), an overview where relevant to the activities for which the contribution was awarded, an overview of advance payments made by the Minister. Each budget item must be accompanied by a separate explanatory note. It should furthermore contain a planning for the following period and if needed a request for payment for the following period. The accountant shall carry out the activities for the audit report in accordance with appendix 4 and shall incorporate in his report the text given therein. The costs of the audit shall be borne from the contribution of the Minister under this agreement.

The financial report shall include an overview of the estimated and actual revenues and expenditures, where relevant to the activities for which the contribution was awarded, and an overview of undertaken commitments.

The financial report shall include the financial annual reports of the NMs of the participating countries, accompanied by auditor reports, including report of findings, drawn up in accordance with Appendix 4. Audit costs will be borne from the contribution of the Minister to this agreement. The annual report may include recommendations regarding procedures or implementation by the MB and/or Fundecooperación.

6. The total contribution of the Minister will not exceed USD 13,253.012.00. Funds shall be transferred to Fundecooperación in installments and will be deposited into the separate account established under the Fiduciary Arrangement mentioned in the seventh Preamble Paragraph.

Payments shall take place only after timely receipt and approval of due financial and narrative reports as mentioned in this agreement. The first installment of USD 346,988.00 to Fundecooperación (separate account under the Fiduciary Arrangement) shall be paid within four weeks after receipt by the Minister of the countersigned contribution agreement. The subsequent installment(s) requested can only be transferred after the approval of the annual project year-plan, by the Minister and upon receipt of the liquidity forecast, and a cash flow overview of the passed period. If approved the second installment with a maximum of USD 1,000.000.00 will be made only if the previous first installment has been spent and the year-plan justifies the amount to be paid. Further installments will be made based on the liquidity needs and taking into consideration the authorized year-plan and used cash flow. The installments shall be paid within two months after receipt and approval of the mentioned documents and taking into account the results of the mid-term review (article 11). The final settlement of accounts will be done after approval of the final reports.

In case that Fundecooperación needs more liquidity before finalizing the reporting period, and taking into consideration the time lap still remaining to receive the following annual installment, a Payment Request to the Embassy can be done by Fundecooperación, accompanied by an overview of the costs in the passed period and a liquidity forecast for the coming period (maximum 6 months).

7. Funds made available by the Minister under this Contribution Agreement shall be deposited into a separate PSC account at the Fiduciary Bank in Costa Rica as established under before-mentioned Fiduciary Contract. The Bank shall submit every three months, a report on the financial status of the total or the PSC part of the fiduciary contract to Fundecooperación, to the members of the MB: the National Mechanisms of the three partner countries and through Fundecooperación to the Minister in the English language. Such status report will also be submitted in preparation for the semi-annual meetings of the MB. Fundecooperación will act as an administrator of the funds through the Trust Agreement.

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8. Fundecooperación shall instruct the Fiduciary Bank to transfer funds from the PSC account into accounts held by the NMs for operational costs and activities approved by the MB and on the basis of liquidity need requests received from the NM. The Fiduciary Bank shall ensure that the funds are properly disbursed into the accounts of the NMs in accordance with the decisions of the MB. Disbursement shall be based on these Regulations and the decisions of the MB, thus only for approved projects and non-project costs and in accordance with disbursement schedules. In principle transfers for approved projects shall take place according to disbursement schedules as established as part of the procedures. The NM concerned will become responsible for supervision of implementation upon receipt of installment(s).
9. Any income generated by the PSC or interest accrued on the funds made available by the Minister shall be used to finance the activities to be carried out in connection with this agreement and shall be included in the financial statement.
10. Any contributions or earmarked funding received from third parties for PSC shall be reported by Fundecooperación to the Minister in writing in its annual report mentioned in Article 8. Such contributions shall in principle be deposited into the PSC account.
11. A mid-term external evaluation shall be carried out in 2009. This will be executed under the responsibility of the Royal Netherlands Embassy. Cost of the evaluation will be borne from the contribution under this agreement. If the Royal Netherlands Embassy considers it necessary, this independent evaluation may also take place before 2009. The Minister may take the necessary measures on the basis of the results of the mid-term evaluation. Six months after completion of activities, an external evaluation will take place. This evaluation will be financed through the funds of the Royal Netherlands Embassy in San José
12. Within six months after the end of the present Contribution Agreement, Fundecooperación shall account for the use made of the contribution in a well-documented final report, comprising of a narrative report describing the objectives, results and outcomes achieved and how they compare to those formulated at the start in the MYP and a financial statement for the total period that contains at least the following items:
- a. the total amount of the installments disbursed by the Minister;
  - b. an itemized overview of all financial and audit reports submitted to the Minister by Fundecooperación in connection with this agreement;
  - c. an overview of the total expenditure financed from the contribution.
13. All items procured from the Minister's contribution shall be assigned at the end of the PSC to a relevant purpose. Fundecooperación shall submit proposals for this disposal to the Minister for approval and shall account for the disposal of these items in its final report.
14. After receipt of the final report referred to in article 12, the Minister shall determine the final amount of the contribution within three months. On this basis, accounts shall be settled with Fundecooperación. Unspent funds from the Minister's maximum contribution of USD 13.253.012.00 shall be returned immediately and unconditionally.
15. The Minister may inspect or instruct others to inspect the activities carried out in connection with this agreement, including reports and financial accounts of Fundecooperación, NMs and/or participating organizations of Benin, Bhutan and Costa Rica. Fundecooperación, the NM concerned and/or participating organizations shall render every assistance to the official(s) appointed by the Minister to carry out such an inspection and shall allow them access to the documents relating to the PSC.

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16. The parties shall not offer to third parties or seek or accept from or be promised by third parties, for themselves or for any other party, any gift, remuneration, compensation or benefit of any kind whatsoever, which could be interpreted as an illegal or corrupt practice. Such practices may provide grounds for the dissolution of this agreement or part thereof.

17. In connection with products subject to copyright or other intellectual property rights, the Minister's contribution to the PSC shall be mentioned. The Minister shall be entitled to make use, world-wide, of all products produced in this connection free of charge.

18. If the Minister is of the opinion that the specific way in which the PSC MYP is implemented or that changes in policy have led to a situation in which the financing of an PSC is damaging to the Netherlands Government's foreign policy, he/she shall propose consultation with Fundecooperación and the MB and/or JC. On the basis of such consultations, the Minister may provide advice regarding the given implementation of the MYP or may give instructions regarding the disbursement of the financial installments to the PSC.

19. The Minister reserves the right to reduce or prematurely terminate the funding for this PSC, suspend the transfer of installments or demand reimbursement of all or part of the funds already transferred to the PSC Account under the Fiduciary Agreement, and/or terminating the aforementioned Fiduciary Agreement unilaterally, if Fundecooperación fails to fulfill its obligations under this agreement, or fails to fulfill them on time, or uses the resources for a purpose other than that for which the Minister made them available, or if the cooperation in the PSC does not provide perspectives any more to meet the objectives of the program, or if a third party has provided co-financing for the same activities without the Minister's prior knowledge, the consequences of which for the budget have not been approved. The Minister shall reduce or prematurely terminate his/her contribution only after consultation with Fundecooperación and the MB and where relevant the PSC JC, after which the account shall be settled on the basis of the costs incurred and taking into account any financial commitments reasonably entered into for the future.

20. Unless communicated otherwise, all correspondence relating to this agreement shall be worded in the English language and addressed to

For the Minister  
Name: Christien Aben  
Second Secretary

Fundecooperación  
Mauricio Castro Salazar  
Position:  
Executive Director

21. This agreement shall enter into effect on the date that it is subscribed. Any changes or additions to this agreement shall be valid only if agreed in writing by both parties.

22. This agreement shall be governed by Dutch civil law. Any dispute arising from this agreement shall be referred to the competent court in The Hague.

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Ambassade van het  
**Koninkrijk der Nederlanden**

Agreed and signed in duplicate  
At  
On  
For the Minister of Foreign Affairs/  
For Development Cooperation:

Susan Blankhart (Name)  
Ambassador (Position)  
Postal address:

At  
On

For Fundecooperación

Ronald Vargas Brenes  
President of the Board of Directors  
Postal address: PO Box 496-1002

- Appendix 1: Regulations with Agreed Minutes May 2005
- Appendix 2: Multi Year- Plan
- Appendix 3: Start-up Half Year-Plan
- Appendix 4: Guidelines Auditor