

AGREEMENT FOR MWI-13/0027, MALAWI LAKE BASIN PROGRAMME III

Reference is made to the application from We Effect (the Grant Recipient) to the Norwegian Ministry of Foreign Affairs (the Ministry) dated 28 March 2014 regarding financial support to the above programme.

The Ministry has decided to award a grant of up to NOK 79,900,000 (the Grant) to the Grant Recipient for the implementation of the programme as it is described in the application including any attachments (the Programme).

Disbursement after the current calendar year is subject to Norwegian parliamentary appropriations.

The Grant is provided subject to the acceptance of the conditions and procedures specified in this document by the Grant Recipient. This document, signed by the Ministry and the Grant Recipient (the Parties), shall constitute an agreement (the Agreement) between the Parties.

The Agreement number shall be used in all further correspondence regarding the Grant, including requests for disbursement and in connection with repayment of unused funds.

The Royal Norwegian Embassy in Lilongwe (the Embassy) is, as part of the Ministry, competent to act on behalf of the Ministry. All communication to the Ministry in regard to the Agreement shall be directed to the Embassy.

1. PURPOSE AND IMPLEMENTATION OF THE PROGRAMME

The Grant Recipient shall implement the Programme as set out in the Agreement including the budget attached as Annex 1, and in the application, including any attachments, with any agreed adjustments (the Application).

The planned effects for the target group of the Programme are reduced poverty and vulnerability to climate change in the targeted areas (Goal).

The purpose of the Programme is improved livelihoods of rural communities in targeted areas (Purpose).

The goal hierarchy is as set out in the Application.

Significant changes to the Application, such as changes to the budget, the sources of income, the goal hierarchy, the Grant Recipient's organisation and/or alterations to the implementation plan of more than three months, are subject to the Ministry's prior,

written approval. The Ministry may stop disbursements of the Grant until such changes have been approved.

The Grant Recipient shall identify, assess and mitigate any relevant risks associated with the implementation of the Programme, including the risk of financial irregularities and any potential negative effects of the Programme on the environment, climate or gender equality.

The Grant Recipient shall acknowledge the Ministry's support in any communications or publications relating to the Programme.

If the Grant Recipient is to transfer all or part of the Grant to a cooperating partner, the Grant Recipient shall enter into a written agreement with the partner. In such agreements the Grant Recipient shall require the partner to have administrative procedures that ensure compliance with the obligations of this Agreement, particularly with regard to reporting, audit, procurement and measures to prevent financial irregularities. The Grant Recipient shall provide the Ministry with a template for such an agreement for approval before entering into the agreement.

2. THE GRANT

The Grant shall be used exclusively to fund the approved costs of the Programme, including indirect costs as described below, during the planned period May 2014 through May 2019 (the Support Period).

The Grant includes an amount to cover overheads/indirect costs incurred by the Grant Recipient. This amount shall not exceed 6 % of the actual costs of the Programme.

Any accrued interest on the Grant may be used to finance the implementation of the Programme during the Support Period.

The Grant Recipient is responsible for obtaining the financial and other resources that are required in addition to the Grant.

If the Grant is converted into another currency, the Grant Recipient shall seek to achieve the best possible exchange rate. The exchange shall be made through a national or commercial bank unless another procedure is approved by the Ministry. If exchange rate fluctuations decrease the value of the Grant to such an extent that this will have consequences for the implementation of the Programme, the Grant Recipient shall inform the Ministry as soon as possible. If exchange rate fluctuations increase the value of the Grant, the gain arising from the conversion of currencies shall be repaid in accordance with Section 6 of this Agreement, unless otherwise agreed between the Parties.

Representatives of the Ministry and the Norwegian Auditor General shall at all times be allowed to undertake control measures to verify that the Grant is being used in accordance with the Agreement. The representatives shall hereunder be permitted to visit any premises and examine any records, goods and documents requested, and have access to the Grant Recipient's auditor and the auditor's assessments of all information pertaining to the Grant Recipient and the Programme. Confidentiality obligations on the part of the auditor shall not hinder such access.

If the Grant Recipient is to transfer all or parts of the Grant to a cooperating partner, the Grant Recipient shall require in its agreement with the partner that the Ministry and the Norwegian Auditor General have the same access to undertake the control measures related to the partner's use of the Grant as described above.

3. DISBURSEMENT

The Grant will be disbursed in advance in semi-annual instalments.

The first disbursement shall amount to NOK 8,500,000 and be made upon the signing of this Agreement and when the Ministry has received a written disbursement request from the Grant Recipient.

Subsequent disbursements shall be based on the financial needs of the Programme. The Grant Recipient shall submit written disbursement requests documenting the need for the requested amount through a transcript of the balance sheet from the income statement. The Grant Recipient shall also provide confirmation that the Programme is being implemented in accordance with the Application, the approved implementation plan and budget.

Except for the Programme's first year, one of the disbursements each year is subject to the Ministry's receipt and approval of the Grant Recipient's annual report and the annual financial report (due 15 April each year).

The Grant Recipient shall use a separate bank account common for all grants from the Ministry. All disbursements of the Grant shall be made to this account. The account details are as follows:

Name of the account: We Effect
IBAN no.: SE 778000 0890110370218505
Name of bank: Swedbank
Bank's address: SE 10425 Stockholm, Sweden
Swift/BIC code: SWEDSESS

4. REPORTING

The first financial and reporting year of the programme will run from 22 May 2014 to 14 March 2015. Subsequent financial and reporting years will run from 15 March to 14 March the following calendar year (the Financial and Reporting Year).

The Grant Recipient shall submit to the Ministry the reports listed below. If unable to meet a reporting deadline, the Grant Recipient shall inform the Ministry immediately.

An **annual** and a **semi-annual progress report** shall be submitted to the Ministry by 15 April and 15 October each year, respectively. The annual report shall cover the previous 12 month period from 15 March to 14 March and the semi-annual report shall cover the previous 6 month period of 15 March through 15 September. The reports shall be signed by an authorised representative of the Grant Recipient. The progress reports shall be set up in such a way that it may be compared with the information in the Application. The reports shall include:

- a brief account of any deviations between the Application and the implementation of the Programme, and of any consequences these deviations will have for achieving the planned results,
- a brief account of the handling of identified risks, and on the Programme's impact on the environment, climate and gender equality,
- the preliminary results achieved under the Programme in relation to the goal hierarchy as set out in the Application: activities implemented (Outputs) and, if possible, the Programme's effect on the target group (Outcome),
- a detailed work plan for the next reporting period,
- a record of procurements and sales carried out under the Programme during the reporting period when such documents are required under sections 8 and 9 of this Agreement.

In addition, the annual report shall include a summary of all of the Grant Recipient's project activities during the last Financial and Reporting Year, as well as a brief financial report covering all of the Grant Recipient's expenses and income during the last Financial and Reporting Year.

The **financial report** for the last 12 month period from 15 March to 14 March shall be submitted to the Ministry by 15 April each year. The report shall be signed by an authorised representative of the Grant Recipient, and countersigned by the financial controller. The financial report shall consist of Programme accounts with corresponding notes on the various items, using the same structure and items as in the budget, and shall include:

- the latest approved overall budget
- total expenses charged/capitalised
- the approved budget for the period in question
- expenses charged/capitalised in the period in question,
- income from all sources, including interest accrued

- any deviations between the approved budget for the period in question and the expenses charged/capitalised during the period in question in terms of amount and percentage. Deviations of more than 10% from a budget line shall be explained
- a detailed budget for the next period
- estimated financial need up to the next reporting deadline.

The **auditor's report** shall be submitted to the Ministry by 1 September each year. The audit shall be carried out in accordance with ISA 800 or 805 by a chartered/certified or state-authorized public accountant. The costs of the audit shall be covered by the Grant. If the auditor submits a management letter (matters for governance attention) this shall be attached to the auditor's report.

The **final report** for the Support Period shall be submitted to the Ministry no later than 1 November 2019. The final report shall be set up in such a way that it may be compared with the information in the Application. It shall include:

- a brief description of the cooperation with, and division of roles between, cooperating partners in the Programme
- a brief description of the Programme and the main lessons learned from its implementation
- a presentation and assessment of activities implemented and services and products delivered (Outputs) and the Programme's effect on the target group (Outcome), compared with the goal hierarchy and the implementation plan of the Application, as well as an estimation of the Programme's probable effect on society (Impact) to the extent possible
- a statement of the risks identified prior to and during implementation of the Programme and how these have been handled
- a brief assessment of the sustainability of the results, and a prognosis for a possible continuation of the Programme
- a brief account of the Programme's impact on the environment, climate and gender equality
- a record of procurements and sales carried out under the Programme during the reporting period when such documents are required under sections 8 and 9 of this Agreement.

5. OTHER FOLLOW-UP MEASURES

Annual meetings shall be held by the end of June every year. The Grant Recipient shall call and chair the meeting and draft minutes of the meeting. The purpose of these meetings is to review the Programme's progress and preliminary results, and discuss the implementation plan, as well as the expenditures and budget for the next period. The annual report and the financial report for the previous period form the basis for these meetings, unless otherwise specified in the invitation to the meeting. The minutes shall be submitted to the Ministry within 2 weeks after the meeting for approval.

A **mid-term review** of the Programme shall take place by the end of November 2016. The Ministry shall draft the terms of reference for the review, which shall be approved by the other Party.

A **final review** of the Programme shall take place by the end of August 2019. The Ministry shall draft the terms of reference for the review, which shall be approved by the other Party.

The costs of the reviews shall be covered by the Ministry over and above the Grant.

The Ministry may, at any time, carry out independent reviews, field visits or evaluations of the Programme. The costs of such reviews, etc. shall be covered by the Ministry over and above the Grant.

6. REPAYMENT OF INTEREST AND UNUSED FUNDS

Once all activities of the Programme have been implemented, any unused funds, including accrued interest, that total more than NOK 500, shall be repaid as soon as possible, and at the latest six months after the end of the Support Period. The transaction shall be marked: “Unused funds, MWI-13/0027, Malawi Lake Basin Programme III”.

Repayments shall be made to the following bank account:

Name of the account:	Kgl. Norsk Ambassade Lilongwe
Electronic IBAN no.:	NO6376940513657
Name and address of the bank:	DnB ASA, 0021 Oslo, Norway
Swift/BIC code:	DNBANOKKXXX

7. FINANCIAL IRREGULARITIES

During the implementation of the Programme, the Grant Recipient is required to practise zero tolerance for financial irregularities. In order to fulfil this requirement, the Grant Recipient shall:

- have systems for internal control, and shall organise its operations in such a manner that financial irregularities, including corruption, theft, embezzlement, fraud, misappropriation of funds, favouritism and nepotism are prevented and detected,
- not, during the implementation of the Programme, whether directly or indirectly, demand, receive, accept, offer or give any kind of gift, payment or benefit that could be construed as illegal or corrupt practice,
- without delay inform the Ministry of any suspicion of financial irregularities, including any of the matters mentioned above, that the Grant Recipient becomes

aware of during the implementation of the Programme. The Grant Recipient shall account for all the known facts of the case and give its own assessment of how the matter should be followed up, including the extent to which criminal prosecution is appropriate. The matter will be handled in accordance with the Ministry's guidelines for handling suspicion of financial irregularities.

8. PROCUREMENT

Any procurement to be undertaken during the implementation of the Programme shall be based on competition, and carried out in accordance with good business practice, ensuring transparency, verifiability, equal treatment, predictability and non-discrimination on the basis of nationality or local ties, so that the best possible conditions may be obtained.

The Grant Recipient shall:

- take into account any environmental impact when planning procurement processes,
- ensure that providers do not make use of child labour or forced labour and/or practise discrimination (as defined in the core conventions of the International Labour Organization), and that they respect the right to freedom of association and the right to organise and engage in collective bargaining, as set out in the core conventions,
- request tenderers to inform the Grant Recipient of any potential conflicts of interest related to the procurement,
- enforce a strict practice towards tenderers who can be linked to professional misconduct, i.e.:
 - only accept tenders including a declaration of good conduct confirming the enterprise has not been convicted of participation in a criminal organisation, or corruption, fraud, money laundering, or any other form of financial crime,
 - consider rejecting tenders where the tenderer indicates that, or it is known that, the tenderer has received a final conviction for a criminal offence related to its professional conduct,
 - consider rejecting tenders where the tenderer indicates that, or it is known that, the tenderer has committed a serious breach of professional or ethical standards in the branch concerned.

When the total value of a procurement exceeds NOK 100 000 excluding VAT, the Grant Recipient shall draw up a written report with documentation of all assessments and decisions during the entire procurement process from the planning stage to the signing of the contract. The report shall include assessments and decisions regarding the items listed above.

If the total value of a procurement exceeds NOK 100 000, the Grant Recipient shall provide the Ministry with a draft of the contract for information before entering into the contract.

All building and/or construction contracts and contracts on related services entered into under the Programme shall be awarded in accordance with the Norwegian Act on Public Procurement.

9. PROPERTY, EQUIPMENT AND INTELLECTUAL PROPERTY RIGHTS

The right of ownership to property, equipment, consumables and intellectual property rights procured or developed by use of the Grant shall vest in the Grant Recipient or its cooperating partner, unless otherwise stated in the Application. All matters associated with such property, equipment, consumables and intellectual property rights are the exclusive responsibility of the Grant Recipient. The Ministry shall have an unlimited right to use any documents developed as part of or in connection with the Programme, free of charge.

If such property and/or equipment is sold before the end of the Support Period, the sale shall be made at market price unless otherwise approved by the Ministry. In the event of such sale, the purchaser may not be an employee, or a relative of an employee, of the Grant Recipient, unless the Ministry has approved otherwise. The Grant Recipient shall, together with the purchaser(s), prepare a record of sales comprising information on all equipment sold, offers received, the final price and the name of the purchaser. The income from the sale shall accrue to the Programme. The record shall be attached to the first Progress report due after the sale, and the selling price shall be included in the financial report.

If the activities under the Programme do not continue after the end of the Support Period or after termination of the Agreement, the Ministry may require that the Grant Recipient sells all remaining property, equipment and goods that have been purchased by use of the Grant as described above. The income from the sale shall be repaid to the Ministry's account, as referred to in section 6, unless otherwise agreed by the Parties.

10. BREACH OF AGREEMENT

If the Grant Recipient fails to fulfil its obligations under this Agreement and/or if there is suspicion of financial irregularities, the Ministry may withhold all or part of the Grant.

In the event of material breach of the Agreement, including if it is documented that all or part of the Grant has not been used in accordance with the Agreement, if the use of funds has not been satisfactorily accounted for, and/or if financial irregularities have taken place, the Ministry may, after having given the Grant Recipient an opportunity to

explain and rectify the breach within a reasonable deadline, cancel the Agreement, and/or claim repayment of all or parts of the Grant.

Even if the Agreement is terminated pursuant to section 13 or 14, this section on breach of agreement shall remain in force for five years following the time of completion or termination.

11. SETTLEMENT OF DISPUTES

If any dispute arises relating to the implementation or interpretation of the Agreement, the Parties shall seek to reach an amicable solution. Any dispute that cannot be resolved amicably shall be settled in accordance with Norwegian law in the legal venue of the defendant. The court venue of the Ministry shall be Oslo District Court.

12. WAIVER – IMMUNITIES

Nothing in this Agreement or any document related to this Agreement shall imply a waiver, express or implied, by the Ministry, the Government of Norway or any of its officials of any privileges or immunity enjoyed by them or their acceptance of the jurisdiction of the courts of any country over disputes arising thereof. This clause will not prevent litigation in the defendant's legal venue.

13. ENTRY INTO FORCE AND DURATION

The Agreement shall enter into force on the date of the Grant Recipient's written acceptance, as described below, and shall remain in force until both Parties have fulfilled all obligations arising from it. Whether these obligations shall be regarded as fulfilled shall be decided in consultation between the Parties.

14. TERMINATION

Each of the Parties may terminate the Agreement upon six months' written notice. In the event of termination of the Agreement, the Grant Recipient shall not utilise the Grant for commitments established from the date of the receipt of the notice of termination. The Grant may however be used for commitments already established on the date of receipt of notice the three following months. If the Programme cannot be completed without the Grant, the Grant Recipient shall discontinue the Programme promptly in an orderly and financially sound manner. Any funds that remain unused three months after the date of the receipt of the notice of termination shall be repaid to the Ministry immediately.

A final report for the entire period the Grant has been used containing all items listed for the final report in section 4, as well as a financial report and auditor's report for the period from the previous financial report and up till the end of utilisation of the Grant,

shall be submitted to the Ministry within five months after the receipt of the notice of termination. The Agreement will not be considered terminated until these reports have been approved by the Ministry.

15. SIGNATURE

The undersigned, acting on behalf of their respective institutions, have signed the Agreement in two originals in the English language.

Done in Lilongwe on 22 May 2014.

For the Norwegian Ministry
of Foreign Affairs

For We Effect

Asbjørn Eidhammer
Ambassador

Karin Alfredsson
Regional Director

Attachment: Annex 1 - Approved budget for the Programme