IMPLEMENTATION AGREEMENT

Between

THE

COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

And

THE

EAST AFRICAN COMMUNITY

on the implementation of the

CONTINUATION OF THE REGIONAL INTEGRATION SUPPORT PROGRAMME UNDER THE 10th EDF
DEFINITIONS

In this agreement unless the context otherwise requires:

"AU" means the African Union;

"ANNUAL WORK PLAN" means the work plans prepared annually for any RISP activity;

"COMESA" means the Common Market for Eastern and Southern Africa;

"CONTRACTING AUTHORITY" means the Contracting Authority of the RISP Continuation Contribution Agreement as defined in the document (European Commission);

"CONTRACTING PARTY" means the contracting party (COMESA) to the RISP Continuation Contribution Agreement with the Contracting Authority;

"DSA" means Daily Subsistence Allowance;

"EAC" means the East African Community;

"EC" means the European Commission;

"IGAD" means the Inter-Governmental Authority for Development;

"IMPLEMENTING PARTNER" means any institution which would be legally bound in implementing the RISP Continuation Contribution Agreement through an agreement with the Contracting Party;

"IOC" means the Indian Ocean Commission;

"IRCC" means the Inter Regional Coordinating Committee;

"RISP" means the Regional Integration Support Programme under the 9th EDF (9 ACP RSA 19);

"RISP CONTINUATION" means the Regional Integration Support Programme under the 10th EDF (FED/2009/21716);

"RO" means Regional Organisation;

"SADC" means the Southern Africa Development Community.
PREAMBLE

The COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA) (hereinafter referred to as "Contracting Party") and The EAST AFRICAN COMMUNITY (hereinafter referred to as "Implementing Partner") and alternatively both jointly referred to as "the parties");

RECALLING that COMESA, EAC, IGAD and IOC as building blocks of the Africa Union adhere to the objectives of the AU to accelerate economic integration of the African continent, with the aim to achieve economic growth, reduce poverty and attain sustainable economic development;

RECALLING that the four ROs have, since 2001, been engaged, in the joint preparation, implementation and monitoring of the Eastern and Southern Africa-Indian Ocean Regional Strategy Papers and Regional Indicative Programmes for the periods 2002-2007 and 2008-2013 respectively, within the framework of the IRCC, in partnership with the European Commission;

CONSIDERING the Tripartite process involving COMESA, EAC and SADC which aims at the creation of a Single Market encompassing all the Member States/Partner States of the three ROs through the harmonisation of their regional integration policies and programmes;

RECALLING that COMESA and, EAC have a Memorandum of Understanding which provides for the facilitation of their collaboration and complementarity for the benefit of their Member / Partner States;

CONSIDERING that the four ROs have, in association with the EC, jointly designed the RISP Continuation and agreed to jointly implement the Programme;

FURTHER CONSIDERING that RISP Continuation shall be implemented through a Contribution Agreement between COMESA and the European Commission;

NOTING that EAC subscribes to the objectives and results of the Contribution Agreement;

CONSIDERING that the Implementation of the Agreement shall be based on an agreed consolidated work programme agreed upon by the Contracting Party and the Implementing Party and also approved by the Contracting Authority;

PURSUANT to the need for a legal framework for implementation of the Regional Integration Support Programme (RISP) Continuation Component of the EAC under the RISP Continuation Agreement signed between COMESA and the EC
NOW THEREFORE, THE PARTIES HEREBY AGREE AS FollowS:

ARTICLE 1

OBJECTIVES

The objectives of this agreement are:

a) To define a legal framework of cooperation between the parties in the joint implementation of the RISP Continuation, whose objectives and expected results are described in the RISP Continuation Contribution Agreement;

b) To uphold the principles of good governance, transparency, integrity, and accountability in the implementation of the RISP Continuation by the parties;

c) To establish the appropriate coordination mechanism to ensure that planning, monitoring and reporting standards that are applied in the joint-implementation of the programme adequately address the principles of relevance, effectiveness, efficiency and sustainability embedded in the RISP Continuation Contribution Agreement; and

d) To define an adequate verification mechanism to ensure that actions are implemented according to the Contribution Agreement.

ARTICLE 2

GENERAL OBLIGATIONS OF THE CONTRACTING PARTY

1. The Contracting Party to the RISP Continuation Contribution Agreement shall:

a) Be charged with the overall responsibility in ensuring that the actions planned and undertaken under the Contribution Agreement are compliant with the objectives and expected results of the programme;

b) Be ultimately accountable to the Contracting Authority of the Contribution Agreement for all eligible expenses either incurred directly by itself or by its implementing partners for the undertaking of actions through funding under the RISP Continuation Contribution;

c) Provide a report at the end of each financial year to the Contracting Authority as part of its obligations stipulated in the Contribution Agreement; and
d) Avail the Implementing Partner with the necessary planning, monitoring and reporting guidelines which would be necessary for the Implementing Partner to manage the component of the RISP Continuation entrusted to its authority.

ARTICLE 3
GENERAL OBLIGATIONS OF THE IMPLEMENTING PARTNER
The Implementing Partner shall:

   a) Be charged with the responsibility of implementing the components of the RISP Continuation whose management will be entrusted to it through each Annual Work Plan as will be approved by Contracting Authority, including the co-ordination of its Member/Partner States activities and the management of operational, logistical and financial resources;

   b) Implement its RISP Continuation component and manage the resources which will be availed to it from the RISP Continuation in accordance with the Contribution Agreement and the terms set-out herein;

   c) Avail the Contracting Party with all necessary information regarding the management of its RISP Continuation component, including actions undertaken, results achieved and utilization of resources; and

   d) Provide full information on the implementation of activities under its components during the implementation period.

ARTICLE 4
ACCOUNTS, AUDITING AND FINANCIAL CHECKS

1. The Implementing Partner shall comply with the Internationally Accepted Accounting Principles.

2. The Internationally Accepted Accounting Principles allow for the use of relevant International Accounting Standards (IAS) and International Financial Reporting Standards appropriate for the RISP Continuation.

3. The Implementing Partner shall put in place adequate controls to ensure the accuracy and completeness of the RISP Continuation accounts and to ensure that assets purchased under the RISP Continuation are safeguarded.
4. Financial transactions and financial statements shall be subject to the internal and external auditing procedures laid down in the financial regulations, rules, and directives of the Contracting Party.

5. A copy of the audited consolidated financial statements for the RISP Continuation Contribution Agreement shall be submitted to the Contracting Authority through the Contracting Party by the Implementing Partner.

6. The Contracting Party and Authority's auditors shall be authorised to audit the accounts for the financial resources received under the Contribution Agreement and shall be accorded access to all the books and accounts relating to the transactions carried out under the Contribution Agreement.

7. The following costs shall not be considered eligible:

   a) debts and provisions for possible future losses or debts;

   b) interest owed by the Implementing Party to any third party;

   c) items already financed from other sources;

   d) purchases of land and buildings;

   e) currency exchange losses; and

   f) taxes duties and charges (unless the Implementing Party is not able to reclaim them and if allowed by the applicable regulatory provisions of the European Union).

ARTICLE 5
PLANNING, MONITORING AND REPORTING

1. The Contracting Party shall, prior to the commencement of implementation of actions under the Contribution Agreement, provide to the Implementing Partner a Planning and Monitoring Framework guideline which will be consistent with Section 4.4 of the Annex 1 (Description of the Action) of the Contribution Agreement for the planning and monitoring of the activities to be funded under the Contribution Agreement.
2. The Planning and Monitoring Framework will provide a logical linkage between the parties' Multi-Annual Work Plans and Annual Work Plans and the Log Frame Matrix of the RISP Continuation.

3. The Planning and Monitoring Framework will also set the basis for the allocation of RISP Continuation resources to the parties' successive Annual Work Plans.

4. The annual work plan shall determine all the activities to be funded by the RISP Continuation for a specified time frame.

5. Annual Work Plans shall have the following components:
   a) An annual intervention framework for the year articulating the results chain from planned activities to the expected outputs and results;
   b) A narrative work plan expanding on the items of the intervention framework for the year;
   c) A budget which shall be broken down by COMESA Chart of Accounts budget heading and for each expected result of the RISP Continuation; and
   d) The budget working details by activity.

Annual work plans shall be subject to monitoring and evaluation.

6. The monitoring of implementation of annual work plans shall be carried out on the basis of annual intervention frameworks.

7. The indicators for the various components of the results chain (activity, output, objective, etc...) shall constitute benchmarks for the monitoring of implementation.

8. Planning and monitoring will be carried out jointly by the parties in conjunction with the other partner regional organisations.

**ARTICLE 6**

**BUDGETING**

1. Budgetary requirements shall be calculated on the basis of cost estimates of the planned activities using the most efficient process. The criteria for the eligibility of costs which will be covered by the funding shall follow the criteria enumerated under Article 14.1 of the General Conditions of the Contribution Agreement.
2. Detailed budget cost estimates shall be submitted attached to the Annual Work Plan and to be used as a reference.

3. Notwithstanding the principles used for the establishment of the budget, funds committed under the budget cannot be deemed to constitute a justification for the prices of goods and services to be procured under the Contribution Agreement.

4. The reallocation of funds between budget lines will be done in line with COMESA Financial Rules and Regulations (Article 4.6) and must have prior authorisation from the Contracting Party in writing.

5. Reallocation of funds between activities, where there are no transfer of funds between budget lines, shall be made after informing the Contracting Party in writing.

ARTICLE 7
DISBURSEMENT OF FUNDS

1. The Implementing Partner shall open a bank account denominated in EURO to be used solely for transactions relating to the RISP Continuation and shall provide the Contracting Party with a financial identification form (format attached in Appendix 1).

2. Funds transfers shall be made in tranches for each Annual Work Plan. A first tranche of 50% of the total amount of initial advance payable shall be made immediately after the first payment by the Contracting Authority. Successive tranches shall be transferred on the basis of transfer requests made by the Implementing Partner, supported by a monitoring report and relevant documentation.

3. Where no satisfactory documentation is provided within the agreed timeframe, further tranches shall not be disbursed.

4. Disbursements with regard to an annual work plan shall be made only upon the submission and approval of the financial and narrative reports of implementation of the previous work plan.

ARTICLE 8
PROCUREMENT OF GOODS, WORKS AND SERVICES

1. The procurement of any goods, works or services by the Implementing Partner in the context of the RISP Continuation shall be carried out in accordance with 10th European Development fund rules and procedures on an ex-ante control basis.
2. The Implementing Party shall set up an appropriate coordination mechanism with the relevant European Union Delegation in order to facilitate procurement operations.

3. All documents related to procurement under the RISP Continuation shall be made accessible to the Contracting Party and its auditors.

ARTICLE 9
RECRUITMENT OF STAFF

1. The Implementing Partner shall apply the rules and procedures of the Contracting Party for the recruitment of staff provided under the RISP Continuation.

2. The Implementing Partner shall use its own organs and administrative structures to conduct the recruitment process.

3. Calls for applications for employment under the RISP Continuation, by the Parties, shall be sent to all members of the IRCC for advertisement of their respective websites and shall clearly stipulate that applications are open to nationals from all ACP and EU Member States.

4. For recruitment of professional staff, the Implementing Partner shall invite the EU Delegation to participate as observers in short-listing and interview sessions at least 15 days before the planned date of the session.

5. The Implementing Partner shall recruit short-term staff under EDF procurement rules and procedures and long-term staff under the Contracting Party’s rules on recruitment.

ARTICLE 10
SALARIES

1. The salary scale applied by the Implementing Partner shall be within the Salary Scale of the RISP Continuation on the basis of the salary structures of the established position of the Implementing Partner. Salary scale as attached to this Agreement as Appendix 2 ....

2. The Implementing Partner may request derogation, with regard to the application of Article 11.1, from the Contracting Party, on the basis of specific institutional considerations.

1 Salary structure of RISP2 yet to be determined.
3. In all cases, the salary scale applied by the Implementing Partners shall be documented and be complied with during the implementation of the RISP Continuation.

4. Amendments to the salary scale in the course of implementation of this Agreement will be endorsed by the Contracting Party.

5. The Implementing Partner shall use a payroll system that will show all the necessary information needed to calculate staff emoluments.

6. Staff contracts shall clearly state that the staff member is recruited for the purpose of the RISP Continuation project and that their salaries are being drawn from the funding provided under the Contribution Agreement. Staff contracts should be within the requisite timeframe of the Contribution Agreement.

7. No loans and advances shall be paid from RISP Continuation funds.

**ARTICLE 11**

**TRAVEL POLICY**

1. The rules provided under the Contracting Party's Travel Policy and more particularly Rule 88 of the COMESA Financial Rules and Regulations shall apply.

2. The maximum travel cost that may be borne by the RISP Continuation will be equivalent to the most direct and economical routing.

3. The persons who are duly authorized to undertake such travel will be entitled to a comprehensive Daily Subsistence Allowance from the day of commencement of the travel to the last day of the day of the specific duty plus the number of transit days if such transit is justified.

4. The DSA will cover all expenses related to the accommodation, local transport, and meals of the person as well as an out-of-pocket allowance.

5. The Implementing Partner shall apply the DSA rates approved by the Contracting Party's Policy Organs.

6. DSAs shall be paid in advance of activities for which they are due. Justification for the DSA shall be provided by the person to whom advance payment have been remitted through an appropriate retirement procedure at latest 10 days after return to office.
7. The Implementing Partner will take appropriate measures to enforce the procedures regarding the retirement of DSA.

ARTICLE 12
IMPREST

1. The Implementing Partner shall adopt an appropriate management mechanism which shall include providing insurance cover for imprest funds entrusted to competent officers in provision of payments with regard to activities under the RISP Continuation.

2. The continuous auditing of retired imprest shall be evidenced by the issuance of an audit report clearly stipulating the background and objective of the activity, the audit approach, the findings and the recommendations.

3. The Implementing Partner shall not give further imprest to staff with outstanding imprest.

ARTICLE 13
REPORTING

1. In view of enabling joint-monitoring of the RISP Continuation implementation, the Implementing Partner shall provide reports on a regular basis.

2. The reports and the timeframe within which they will be submitted shall be defined by the Planning and Monitoring Framework Guideline and shall include inter-alia:

   a) Quarterly management accounts;
   b) Mid Year Narrative and Financial Report;
   c) Annual Narrative and Financial Report; and
   d) End of Programme Final report.

3. The denomination to be used when undertaking financial reporting shall be the Euro.
4. The Implementing Partner shall submit all original financial documents to the Contracting Party which shall be in the custody of the Contracting Party.

6. Technical Reports shall be kept for a period of 5 years after the closure of the Programme.

ARTICLE 14
FINANCIAL RESPONSIBILITY

1. The Implementing Party shall be under obligation to fully account to the Contracting Party for the funds disbursed to the Implementing Partner as provided for under the Contribution Agreement.

2. Incurred expenses paid from the Implementing Partner's RISP Continuation account but which are not eligible according to the definition of Article 14 of the General Conditions of the Contribution Agreement, shall be subject to recovery and shall be claimed by the Contracting Party.

3. Where a claim is not settled fully within 45 days in terms of Article 18.3 of the Contribution Agreement as applied to this Implementation Agreement, the amount shall be recovered from subsequent payments.

4. The Parties shall exercise their full fiduciary responsibilities in terms of this Implementation Agreement.

ARTICLE 15
SUB-DELEGATION

The implementation of activities as envisaged in this Implementation Agreement may not be sub-delegated to third parties.

ARTICLE 16
INTERNAL AUDIT

1. The Parties' Internal Auditors shall cooperate in order to ensure that the implementation of RISP Continuation actions comply with the provisions of the Implementation Agreement.

2. In exercising the above responsibilities, the Internal Auditors shall carry-out the following activities jointly:
a) Recommend appropriate procedures to strengthen internal controls and alleviate financial management risks;

b) Conduct quarterly review of the status of implementation of recommendations contained in the Management Letters of both internal and external Auditors to ensure that appropriate action has been taken by management; and

c) Prepare quarterly reports on the management and performance of the project.

3. The Implementing Partner’s Internal Auditor shall conduct continuous auditing of payments and retired imprest to ensure that the internal controls are properly maintained.

4. The Implementing Partner’s Internal Audit shall particularly ensure that payments pertaining to RISP Continuation be pre-audited in accordance with the Contracting Party’s Financial Rules and regulations and the Contribution Agreement.

5. Provisional financial accounts shall be cleared by the Contracting Party’s Internal Audit before submission to the Contracting authority or external auditors.

6. The Contracting Party’s Internal Auditors may conduct an on the spot internal audit when necessary.

7. Upon clearance of financial accounts the Contracting Party’s Chief Internal Auditor will give an assurance on the accuracy, completeness and fairness of the accounts.

8. The Implementing Partner shall respond to the management letter from the Contracting Party’s Chief Internal Auditor within 15 days upon reception.

9. The Contracting Party shall send the final Management Letter and financial statements to the Implementing Partner for signing.

10. Additional audit reports may be prepared if deemed necessary to get clarification on specific operations upon agreement by the Parties.

11. The Contracting Party may request for additional internal audit reports if deemed necessary.
12. Verification will be undertaken and performed in terms of Article 7(1) (3) of the Special Conditions of the Contribution Agreement.

ARTICLE 17
EXTERNAL AUDIT

1. The Contracting Party shall appoint External Auditors to audit its accounts, including the accounts for activities undertaken by Implementing Partners.

2. The Contracting Party shall submit financial statements for the financial year to the External Auditors.

3. The External Auditors shall conduct audits of the Implementing Partner's RISP Continuation Accounts in conformity with generally accepted international auditing standards and, subject to any special directions of the Contracting Party, shall:

   a) Determine their own procedure; and

   b) Submit the report of the audit to the Contracting Party.

4. The report of the External Auditors together with the audited financial statements shall be submitted by the Secretary General of the Contracting Party to the Contracting Authority and other relevant parties.

ARTICLE 18
ASSET MANAGEMENT

1. All assets procured with funding under RISP Continuation Agreement shall have their own separate asset register and be marked or engraved 'RISP 2'.

2. At the end of the implementation period, all assets acquired under this Agreement shall revert to the Implementing Partner but shall be kept for the subsequent phase of the RISP Continuation where appropriate.

ARTICLE 19
AMENDMENTS AND SUPPLEMENTS

1. The Implementation Agreement may be amended at any time upon the parties' mutual agreement provided that the party proposing any
amendment shall have given the other party one month's prior notice in writing of the proposal to amend.

2. The Contracting Authority shall be informed of any amendments made to the Implementing Agreement.

ARTICLE 20
CONFIDENTIALITY

The Contracting Party and the Implementing Partner undertake to preserve the confidentiality of any document, information or other material directly related to this Agreement and duly classified as confidential, until at least 5 years after the end date of this Agreement.

ARTICLE 21
VISIBILITY

1. Unless the Contracting Authority requests or agrees otherwise, the Implementing Partner shall take all appropriate measures to publicise the fact that an Action has received funding from the European Union in accordance with agreed guidelines between the parties to this Agreement and the European Union.

2. The Implementing Partner shall prepare a specific action plan for visibility in consultation with the Contracting party and relevant European Delegation.

2. Information given to the press, the beneficiaries of an action, all related publicity material, official notices, reports and publications, shall acknowledge that the Action was carried out “with funding by the European Union” and shall display in an appropriate way the European Union logo

ARTICLE 22
OWNERSHIP/USE OF RESULTS AND EQUIPMENT

1. Ownership, title and industrial and intellectual property rights in the results of the action and the reports and other documents relating to it shall vest in the Implementing Partner, as the case may be together with third parties or as may otherwise be agreed by the Implementing Partner.

2. Notwithstanding the provisions of the first paragraph, the Implementing Partner grants the Contracting Authority the right to use free of charge
and as it sees fit all documents deriving from the action, whatever their form, provided that it does not thereby breach existing industrial and property intellectual rights.

ARTICLE 23
FORCE MAJEURE

1. The Implementing Partner may suspend implementation of all or part of the Action (Chiefly force majeure) making it too difficult or dangerous to continue on the condition that it shall inform the Contracting Party without delay and provide all the necessary details.

2. Such suspension shall also be communicated to the Contracting Authority accordingly.

3. The Implementing Partner shall endeavour to minimise the duration of the suspension and may resume implementation of the Action once the conditions allow, and shall inform the Contracting Party accordingly.

4. The implementation period of this agreement shall therefore be extended by an amount of time equivalent to the duration of suspension without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions.

5. The extension of the period shall be subject to the validity of the Contribution Agreement, by extension or amendment where the duration has expired, between the Contracting Party and the Contracting partner.

6. Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under this Agreement, was not attributable to error or negligence on their part (or of their partners, contractors, agents or employees) and could not have been avoided by the exercise of due diligence.

ARTICLE 24
MISCELLANEOUS

1. For the avoidance of doubt both parties agree to be bound by the Special Conditions applying to the Contribution Agreement between the Contracting Party and the Contracting Authority for the management of the RISP Continuation activities.

2. The parties to this implementation agreement shall, for the purposes of preparation, conclusion and management of the Contribution Agreement,
be charged with the implementation of their respective RISP Continuation activities including the co-ordination of their Member / Partner State activities and the management of operational and logistical resources.

3. The parties to this implementation agreement shall, for purposes of the preparation, conclusion and management of the Contribution Agreement, within their respective legal requirements, cooperate with each other, particularly in the areas mentioned herein.

ARTICLE 25
TERMINATION

1. Either party may terminate this Implementation Agreement by giving the other party a notice period of six months in writing.

2. In the event of termination of the Contribution Agreement between the Contracting Authority and the Contracting Party, the Contracting Party shall give the Implementing Party a termination notice of 45 days in writing.

3. The termination of the Implementation Agreement shall not affect the Contribution Agreement.

ARTICLE 26
SURVIVAL OF OBLIGATIONS

The termination of this Implementation Agreement shall not act as a discharge of release from obligations of the parties that accrued during the operation of this Implementation Agreement with regard to the RISP Continuation.

ARTICLE 27
DISPUTE RESOLUTION

1. Any dispute between the parties as a result of the operation of this Implementation Agreement shall be resolved amicably between the parties through a process of negotiation.

2. If the parties fail to reach an agreement within a period of six months the parties shall refer the dispute for arbitration to the COMESA Court of Justice.

3. The decision of the COMESA Court of Justice shall be final and binding upon the parties.
The Costs of any dispute resolution shall not be covered by funds from the RISP Continuation Contribution Agreement.

ARTICLE 28
ENTRY INTO FORCE AND DURATION

This Agreement shall enter into force upon signature by the duly authorised representatives of the parties and its validity shall be limited to the duration of the RISP Continuation Contribution Agreement.

ARTICLE 29
CONTACT ADDRESS

Any communication relating to this Agreement shall be in writing and shall use the following addresses

For the Contracting Party:

The Secretary General
COMESA
COMESA Secretariat
Ben Bella Road
P.O.BOX 30051
Lusaka 1
Zambia

For the Implementing Partner:

The Secretary General
East African Community (EAC)
AICC Building
Kilimanjaro Wing (5th Floor)
P. O. Box 1096
ARUSHA,Tanzania
IN WITNESS WHEREOF, the parties, each acting through its duly authorised representative, have signed this Implementation Agreement on this ............ day of ................. 2010.

For: The Common Market for Eastern and Southern Africa (COMESA)

Sindiso Ngwenya
SECRETARY GENERAL

For: The East African Community (EAC)

His Excellency Ambassador Juma Mwapachu
SECRETARY GENERAL