



ADAPTATION FUND

AFB/EFC.10/6
5 November 2012

Adaptation Fund Board
Ethics and Finance Committee
Tenth Meeting
Bonn, Germany, 11-12 December 2012

Agenda Item 7.

REVISED STANDARD LEGAL AGREEMENT

Background

1. The Board at its 9th meeting approved a Memorandum of Understanding (MOU) for the implementation of projects/programmes funded by the Adaptation Fund. The MOU was replaced by a standard legal agreement approved by the Board at its 12th meeting. This text entered into force upon conferral of legal capacity to the Board by the Government of Germany in February 2011. According to the standard legal agreement, the disbursement of subsequent tranches of funds would be made following a disbursement schedule attached to the agreement.

2. The Board at its 16th meeting approved the reporting process for implementing entities to inform on progress made by projects under implementation, including disbursement procedures linking the submission of a project's annual report to the disbursement schedule. Following the approved process, the secretariat's review of the Project Performance Report (PPR) and recommendation will be circulated intersessionally to the Board for two weeks on a "non-objection" basis. If any Board member objects to the recommendation, then the PPR will be discussed at the next Board meeting. If there are no objections, the Chair will direct the Trustee to transfer the next tranche of funds.¹ Thus, the disbursement of subsequent tranches of funding becomes contingent to the approval of the PPR by the Board. The Board further decided to request the secretariat to include the approved disbursement template as part of the project agreements.

3. The Board at its 18th meeting considered disbursement requests of second tranches of funding for a number projects under implementation by multilateral implementing entities (MIE), whose annual reports had not been submitted by the time of the request. Having considered the comments and recommendations by the Ethics and Finance Committee (EFC), the Board decided to (a) Request the trustee to transfer the requested amounts, and (b) Request the secretariat to present a revised version of the standard legal agreement aligning the approval of the annual performance reports with the disbursement of tranches, as per decision B.16/21.²

4. Following the request above, the secretariat presents the draft revised standard legal agreement, as contained in the annex to this document, for consideration by the EFC. The draft aligns the agreement's text with the disbursement procedures approved by the Board at its 16th meeting, and incorporates the approved disbursement template³ as part of the agreement.

Recommendation

5. Having considered the proposal by the secretariat, the EFC may want to recommend the Board to approve the revised standard legal agreement as contained in the annex to document AFB/EFC.10/16.

¹ Decision B.16/21.

² Decision B.18/39.

³ Document AFB/EFC.7/4/Rev.2, annex 4.



ADAPTATION FUND

AGREEMENT

(The _____ [Project] [Programme] in [Country])

between

THE ADAPTATION FUND BOARD

and

[IMPLEMENTING ENTITY]

[Insert Date]

AGREEMENT

[The _____ Project in [Country]]

between

THE ADAPTATION FUND BOARD

and

[IMPLEMENTING ENTITY]

Whereas, the Conference of the Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC) in its Decision 10/CP.7 decided that an Adaptation Fund (AF) shall be established to finance concrete adaptation projects and programmes in developing countries that are parties to the Kyoto Protocol to the UNFCCC (Kyoto Protocol);

Whereas, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) in its Decision 1/CMP.3 decided that the operating entity of the AF shall be the Adaptation Fund Board (Board), with the mandate to supervise and manage the AF under the authority and guidance of the CMP;

Whereas, in its Decisions 5/CMP.2 and 1/CMP.3, paragraph 5 (b), the Board adopted the AF Operational Policies and Guidelines for Parties to Access Resources from the Adaptation Fund, including the Fiduciary Risk Management Standards to be Met by Implementing Entities (AF Operational Policies and Guidelines), as set out in Schedule 1 to this Agreement (Agreement); and

Whereas, the proposal submitted by the [Implementing Entity] to the Board seeking access to the resources of the AF in support of the [Project] [Programme], as set out in Schedule 2 to this Agreement, has been approved by the Board, and the Board has agreed to make a grant (Grant) to the [Implementing Entity] for the [Project] [Programme] under the terms of this Agreement; and

Whereas, the International Bank for Reconstruction and Development (IBRD) has agreed to serve as the Trustee of the AF Trust Fund (Trustee) and, in that capacity, to make transfers of the Grant to the [Implementing Entity] on the written instructions of the Board;

The Board and the [Implementing Entity] have agreed as follows:

1. DEFINITIONS

Unless the context otherwise requires, the several terms defined in the Preamble to this Agreement shall have the respective meanings set forth therein and the following additional terms shall have the following meanings:

1.01. "Grant" means the AF resources approved by the Board for the [Project] [Programme] under this Agreement and to be transferred by the Trustee to the Implementing Entity on the written instructions of the Board;

1.02. "Designated Authority" means the authority that has endorsed on behalf of the national government the Project proposal by the Implementing Entity seeking access to AF resources to finance the [Project][Programme];

1.03. "Executing Entity" means the entity that will execute the [Project] [Programme] under the overall management of the Implementing Entity;

1.04. "Implementing Entity" means the [Implementing Entity] that is the party to this Agreement and the recipient of the Grant;

1.05. "Implementing Entity Grant Account" means the account to be established by the Implementing Entity to receive, hold and administer the Grant;

1.06. "Secretariat" is the body appointed by the CMP to provide secretariat services to the Board, consistent with decision 1/CMP.3, paragraphs 3, 18, 19 and 31, which body is currently the Global Environment Facility (GEF); and

1.07. "AF Trust Fund" means the trust fund for the AF administered by the Trustee in accordance with the *Terms and Conditions of Services to be Provided by the International Bank for Reconstruction and Development as Trustee for the Adaptation Fund*.

2. THE PROJECT AND THE GRANT

2.01. The Board agrees to provide to the Implementing Entity the Grant in a maximum amount equivalent to _____ United States Dollars (US \$_____) for the purposes of the [Project] [Programme]. The [Project] [Programme] document, which details the purposes for which the Grant is made, is set out in Schedule 2 to this Agreement. The disbursement schedule and special conditions that apply to the implementation of the Grant are set out in Schedule 3 to this Agreement.

2.02. The Trustee shall transfer the Grant funds to the Implementing Entity on the written instructions of the Board. [Any subsequent transfer of Grant funds to the Implementing Entity after the first tranche shall only be transferred after the Board approves the annual Project](#)

[Performance Reports \(PPR\) referred to in section 7.01.b.](#) Transfers shall be made to the following bank account of the Implementing Entity in accordance with the disbursement schedule set out in Schedule 3 to this Agreement:

[Insert Implementing Entity's bank account details]

2.03. The Implementing Entity shall make the disbursed Grant funds available to the Executing Entity in accordance with its standard practices and procedures.

2.04. The Implementing Entity may convert the Grant into any other currency to facilitate its disbursement to the Executing Entity.

3. ADMINISTRATION OF THE GRANT

3.01. The Implementing Entity shall be responsible for the administration of the Grant and shall carry out such administration with the same degree of care used in the administration of its own funds, taking into account the provisions of this Agreement.

3.02. The Implementing Entity shall carry out all its obligations under this Agreement in accordance with:

- (i) the AF Operational Policies and Guidelines; and
- (ii) the Implementing Entity's standard practices and procedures.

3.03. If, during the course of administering the Grant, the Implementing Entity identifies any material inconsistency between the AF Operational Policies and Guidelines and its own standard practices and procedures, the Implementing Entity shall: (a) immediately notify the Board, through the Secretariat, of such inconsistency, and (b) the Implementing Entity and the Board shall discuss and promptly take any necessary or appropriate action to resolve such inconsistency.

3.04. In the event that the Implementing Entity makes any disbursements of the Grant in a manner inconsistent with the AF Operational Policies and Guidelines, and these inconsistencies cannot be resolved as provided in paragraph 3.03, the Implementing Entity shall refund to the AF Trust Fund, through the Trustee, any such disbursements.

4. [PROJECT] [PROGRAMME] IMPLEMENTATION

4.01. The Implementing Entity shall be responsible for the overall management of the [Project] [Programme], including all financial, monitoring and reporting responsibilities.

4.02. The Implementing Entity shall ensure that the Grant is used exclusively for the purposes of the [Project] [Programme], and shall refund to the AF Trust Fund, through the Trustee, any disbursements made for other purposes. Where the Board believes that the Grant has been used for purposes other than the [Project] [Programme], it shall inform the Implementing Entity of the reasons supporting its view and provide the Implementing Entity an opportunity to provide any explanation or justification for such use.

4.03. Any material change made in the original budget allocation for the Project by the Implementing Entity, in consultation with the Executing Entity, shall be communicated to the Board for its approval. "Material change" shall mean any change that involves ten per cent (10%) or more of the total budget.

4.04. The Implementing Entity shall promptly inform the Board, through the Secretariat, of any conditions that may seriously interfere with its management, or the Executing Entity's execution, of the [Project] [Programme] or otherwise jeopardize the achievement of the objectives of the [Project] [Programme], providing detailed information thereof to the Board for its information.

4.05. The Implementing Entity shall be fully responsible for the acts, omissions or negligence of its employees, agents, representatives and contractors under the Project. The Board shall not be responsible or liable for any losses, damages or injuries caused to any persons under the Project resulting from the acts, omissions or negligence of the Implementing Entity's employees, agents, representatives and contractors.

5. [PROJECT] [PROGRAMME] SUSPENSION

5.01. The Board may suspend the [Project] [Programme] for reasons that include, but are not limited to:

(i) financial irregularities in the implementation of the [Project] [Programme], or

(ii) a material breach of this Agreement and/or poor implementation performance leading the Board to conclude that the [Project] [Programme] can no longer achieve its objectives;

provided, however, that before the Board makes its final decision (a) the Implementing Entity shall be given an opportunity to present its views to the Board, through the Secretariat; and/or

(b) the Implementing Entity may make any reasonable proposal to promptly remedy the financial irregularities, material breach or poor implementation performance.

6. PROCUREMENT

6.01. The procurement of goods and services (including consultants' services) for activities financed by the Grant will be carried out in accordance with the Implementing Entity's standard practices and procedures, including its procurement and consultants' guidelines. In the event that the Implementing Entity makes any disbursements in a manner which the Board considers to be inconsistent with the AF Operational Policies and Guidelines, it will so inform the Implementing Entity giving the reasons for its view and seeking a rectification of the inconsistency. If the inconsistency cannot be resolved, the Implementing Entity shall refund to the AF Trust Fund, through the Trustee, any such disbursements.

7. RECORDS AND REPORTING

7.01. The Implementing Entity shall provide to the Board, through the Secretariat, the following reports and financial statements:

a) an inception report submitted to the secretariat no later than one (1) month after the inception workshop has taken place. The start date of the [project] [programme] is considered the date of the inception workshop;

b) annual ~~progress~~ Project Performance Reports (PPR) on the status of the [Project]/[Programme] implementation, including the disbursements made during the relevant period or more frequent progress reports if requested by the Board. The PPR shall be submitted on a yearly basis one (1) year after the start of [project] [programme] implementation and no later than two (2) months after the end of the reporting year;

c) a mid-term evaluation must be undertaken for any [Project]/[Programme] that is under implementation for over four years; the mid-term should be submitted to the Fund Secretariat within six months of the mid-point of [Project]/[Programme] implementation;

~~bd~~) a [Project]/[Programme] completion report, including any specific [Project]/[Programme] implementation information, as reasonably requested by the Board through the Secretariat, within six (6) months after [Project]/[Programme] completion;

~~ee~~) a ~~mid-term and a~~ final evaluation report, prepared by an independent evaluator selected by the Implementing Entity. The final evaluation report shall be submitted within nine (9) months after [Project]/ [Programme] completion. Copies of these reports shall be forwarded by the Implementing Entity to the Designated Authority for information; and

ef) a final audited financial statement of the Implementing Entity Grant Account, prepared by an independent auditor or evaluation body, within six (6) months of the end of the Implementing Entity's financial year during which the [Project]/[Programme] is completed.

8. MANAGEMENT FEE

8.01. The Board authorizes the Implementing Entity to deduct from the total amount of the Grant and retain for its own account the management fee specified in Schedule 2 to this Agreement.

9. OWNERSHIP OF EQUIPMENT

9.01. If any part of the Grant is used to purchase any durable assets or equipment, such assets or equipment shall be transferred upon the completion of the [Project] [Programme] to the Executing [Entity] [Entities] or such other entity as the Designated Authority may designate.

10. CONSULTATION

10.01. The Board and the Implementing Entity shall share information with each other, at the request of either one of them, on matters pertaining to this Agreement.

11. COMMUNICATIONS

11.01. All communications between the Board and the Implementing Entity concerning this Agreement shall be made in writing, in the English language, to the following persons at their addresses designated below, by letter or by facsimile. The representatives are:

For the Board:

Adaptation Fund Board Secretariat

1818 H Street, NW

Washington, D.C. 20433

USA

Attention: Adaptation Fund Board Chair

Fax: _____

For the [Implementing Entity]:

Attention: _____

Fax: _____

12. EFFECTIVENESS AND AMENDMENT OF THE AGREEMENT

12.01. This Agreement shall become effective upon its signature by both parties.

12.02. This Agreement may be amended, in writing, by mutual consent between the Board and the Implementing Entity.

13. TERMINATION OF THE AGREEMENT

13.01. This Agreement may be terminated by the Board or the Implementing Entity, by giving prior written notice of at least ninety (90) days to the other.

13.02. This Agreement shall automatically be terminated in the event of:

- a) cancellation of the Implementing Entity's accreditation by the Board; or
- b) receipt of a communication from the Designated Authority that it no longer endorses the Implementing Entity or the [Project] [Programme].

13.03. Upon termination of this Agreement, the Board and the Implementing Entity shall consider the most practical way of completing any ongoing activities under the [Project] [Programme], including meeting any outstanding commitments incurred under the [Project][Programme] prior to the termination. The Implementing Entity shall promptly refund to the AF Trust Fund, through the Trustee, any unused portion of the Grant, including any net investment income earned therefrom. No Grant funds shall be disbursed after termination.

14. SETTLEMENT OF DISPUTES

14.01. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, will be settled amicably by discussion or negotiation between the Board and the Implementing Entity.

14.02. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, which has not been settled amicably between the Board and the Implementing Entity shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as presently in force.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement on _____ [201_]

THE ADAPTATION FUND BOARD

Chair

IMPLEMENTING ENTITY

[The following Schedules will be attached to the Agreement: Schedule1 (AF Operational Policies and Guidelines, including the Fiduciary Risk Management Standards; Schedule 2 ([Project] [Programme] Proposal); and Schedule 3 (Disbursement Schedule)].

SCHEDULE 3: DISBURSEMENT SCHEDULE

	<u>Upon Agreement signature</u>	<u>One Year after Project Start^{a/}</u>	<u>Year 2^{b/}</u>	<u>Year 3</u>	<u>Year 4^{c/}</u>	Total
<u>Scheduled Date</u>						
<u>Project Funds</u>						
<u>Implementing Entity Fee</u>						
Total						

^{a/}Use projected start date to approximate first year disbursement

^{b/}Subsequent dates will follow the year anniversary of project start

^{c/}Add columns for years as needed