

1) Reporting (time / forecasts)

**EUROPEAN UNION CONTRIBUTION AGREEMENT
WITH AN INTERNATIONAL ORGANISATION
ENPI/2012/303-093**

(the "Agreement")

The European Union, represented by the European Commission (the "Contracting Authority")

of the one part,

and the United Nations Development Programme (UNDP), with its Head Office at United Nations Plaza 1 – 10017 New York – United States of America, represented by its Office in Brussels – Rue Montoyer 14, B-1000 Brussels, Belgium (the "Organisation")

of the other part,

(Individually a "Party" and collectively the "Parties"), have agreed as follows:

Special Conditions

Article 1 - Purpose

- 1(1) The purpose of this Agreement is a contribution by the Contracting Authority for the implementation of the action entitled: "Clima East: Supporting climate change mitigation and adaptation in Russia and Eastern Neighbourhood countries through pilot projects" (the "Action") as described in Annex I.
- 1(2) The Organisation will be awarded the contribution on the terms and conditions set out in this Agreement, which complies with the provisions of the Financial and Administrative Framework Agreement between the European Community, represented by the Commission of the European Communities and the United Nations, and consists of these special conditions (the "Special Conditions") and their annexes.
- 1(3) The Organisation accepts the contribution and undertakes to do everything in its power to implement the Action under its own responsibility.
- 1(4) The Action is a Joint Management Action for all purposes of this Agreement.
- 1(5) The Action is not a Multi-donor Action for all purposes of this Agreement.

Article 2 – Entry into force, Implementation Period and Execution Period

- 2(1) This Agreement shall enter into force on the date when the last of the two Parties signs.
- 2(2) The implementation period of this Agreement (the "Implementation Period") will begin on:
 - the day following that on which the last of the two Parties signs
- 2(3) The Implementation Period, as laid down in Annex I, is 48 months.

- 2(4) The execution period of this Agreement shall start at the entry into force of this Agreement as provided for in Article 2(1) and shall end at the moment when final payment is paid by the Contracting Authority in accordance with Article 17 of Annex II or when the Organisation repays any amounts paid in excess of the final amount due pursuant to Article 18 of Annex II. In cases where there is no final payment by the Contracting Authority or final repayment by the Organisation, the end of the execution period shall be the end date referred to in Article 12.5 of Annex II.

Article 3 - Financing the Action

- 3(1) The total cost of the Action eligible for financing by the Contracting Authority is estimated at EUR 11,000,000 as set out in Annex III.
- 3(2) The Contracting Authority undertakes to finance a maximum of EUR 11,000,000, equivalent to 100% of the estimated total eligible cost specified in paragraph 1; the final amount will be established in accordance with Articles 14 and 17 of Annex II.
- 3(3) Pursuant to Article 14.4 of Annex II, 7% of the final amount of direct eligible costs of the Action to be reimbursed by the Contracting Authority to the Organisation in accordance with Articles 14 and 17 of Annex II, may be claimed by the Organisation as indirect costs.
- 3(4) Pursuant to Article 14.3 of Annex II, the Regulation under which this Agreement is financed excludes financing of taxes, including VAT, in the case the Organisation can show it cannot reclaim.

Article 4 - Narrative and financial reporting and payment arrangements

- 4(1) Narrative and financial reports shall be produced in support of payment requests, in compliance with Articles 2 and 15.1 of Annex II.
- 4(2) Payment will be made in accordance with the following schedule:

Pre-financing	EUR 8,800,000
Interim payments (subject to the provisions of Annex II)	EUR 2,050,000
Forecast final payment (subject to the provisions of Annex II)	EUR 150,000

Article 5 - Contact addresses

Any communication relating to this Agreement shall be in writing, shall state the number and title of the Action, and shall use the following addresses:

For the Contracting Authority:

Payment requests and attached reports, including requests for changes to bank account arrangements shall be sent to:

European Commission, DG Development & Cooperation, for the attention of unit F5, J-54 03/229, B-1049 Brussels

Copies of the documents referred to above, and correspondence of any other nature, shall be sent to:

European Commission, DG Development and Cooperation, for the attention of unit F3, J-54 06/205, B-1049 Brussels.

For the Organisation:

UNDP Brussels Office, 14 Rue Montoyer, 1000 Brussels

Copies of correspondence shall be sent to:

Maxim Vergeichik, UNDP Regional Support Centre for Europe and CIS, Grosslingova 35, 81109 Bratislava, Slovakia.

Article 6 - Annexes


6(1) The following documents are annexed to these Special Conditions and form an integral part of the Agreement:

- Annex I: Description of the Action
- Annex II: General Conditions applicable to European Union contribution agreements with international organisations
- Annex III: Budget for the Action
- Annex IV: Financial identification form
- Annex V: Standard request for payment

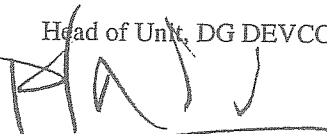
6(2) In the event of a conflict between the provisions of the present Special Conditions and any Annex thereto, the provisions of the Special Conditions shall take precedence. In the event of a conflict between the provisions of Annex II and those of the other annexes, the provisions of Annex II shall take precedence.

Done in Brussels, in three originals in the English language, two for the Contracting Authority and one for the Organisation.

For the Organisation

Name: Antonio Vigilante
Position: Director, UNDP Office Brussels
Signature: 
Date: 04 DEC. 2012

For the Contracting Authority

Name: Philip Mikos
Position: Head of Unit, DG DEVCO F3
Signature: 
Date: 22/11/12

ANNEX II

General Conditions applicable to European Union contribution agreements with international organisations

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GENERAL AND ADMINISTRATIVE PROVISIONS

Article 1 - GENERAL OBLIGATIONS

- 1.1 The Organisation shall ensure that the Action is carried out in accordance with the Description of the Action contained in Annex 1 and is responsible for achieving the objectives set out therein. The Organisation shall report on the indicators of achievement specified in the Description of the Action.
- 1.2 The Organisation shall implement the Action with the requisite degree of care, efficiency, transparency and diligence, as required by best practice in the field concerned, and in compliance with this Agreement.

The Organisation shall make every effort to mobilise all the financial, human and material resources required for full implementation of the Action, as specified in the Description of the Action.

- 1.3 The Organisation may act either alone or in partnership with one or more organisations mentioned in the Description of the Action (implementing partners or partners). Partners shall actually participate in implementing the Action, and the costs they incur shall then be eligible under the same conditions as those incurred by the Organisation.

It may also contract parts of the Action, in accordance with the provisions of article 10 hereof.

Where the EU contribution has been awarded to the Organisation in the form of a grant following a call for proposal or a direct award, and therefore not as a Joint Management Action, the Organisation may only award grants to third parties ("sub-grants") if so provided for in the Special Conditions in order to support the achievement of the objectives of the Action, and in particular where the implementation of the Action requires financial support to be given to third parties. Such sub-granting may not be the main purpose of the Action and it shall be duly justified. The Description of the Action shall include a list with the types of activity which may be eligible for sub-grants, together with the criteria for the selection of the beneficiaries of these sub-grants. The Description of the Action shall also establish the total amount which may be used for awarding sub-grants as well as the minimum and maximum amount per sub-grant. . The maximum amount of a sub-grant shall be limited to EUR 10 000 per third party while the total amount which may be awarded as sub-grants to third parties shall be limited to EUR 100 000. The sub-grants awarded by the Organisation are subject to the nationality rules provided for in Article 10 .

Where the Action is not a Joint Management Action, the bulk of the Action shall be undertaken by the Organisation, and where applicable, its partners.

The Organisation shall remain fully responsible for the co-ordination and execution of all contracted activities.

- 1.4 The Organisation undertakes to ensure that the conditions imposed upon it under Articles 1, 3, 4, 5, 6, 7, 10, 14, 16 and 17 shall also apply to all partners and, where applicable, contractors involved.
- 1.5 The Organisation shall take appropriate measures to prevent irregularities, fraud, corruption or any other illegal activity in the management of the Action. All suspected and actual cases of irregularity, fraud and corruption related to this Agreement as well

as measures related thereto taken by the Organisation shall be reported to the Contracting Authority without delay.

Where appropriate the Organisation shall terminate contracts with partners, contractors or agents involved in fraudulent behaviour or corrupt practices in connection with this or any other actions implemented by the Organisation and financed by the European Union, and shall take all reasonable measures to recover funds unduly paid.

- 1.6 Without prejudice to Articles 1.3 and 10, the Agreement and the payments attached to it shall not be assigned to a third party in any manner whatsoever without the prior written consent of the Contracting Authority.
- 1.7 The provisions regarding "Joint Management Actions" in these General Conditions may be applied where at least one of the following conditions is met:
 - the performance of the Action requires the pooling of resources from a number of donors, and it is not reasonably possible or appropriate to assign the share contributed by each donor to each type of expenditure (hereinafter, "Multi-donor Actions"), or
 - the European Commission and the Organisation are bound by a long-term framework agreement laying down the administrative and financial arrangements for their cooperation; or
 - the European Commission and the Organisation have jointly assessed the feasibility and defined the terms for implementation of the Action.
- 1.8 Where the European Commission is not the Contracting Authority, it shall not be a party to this Agreement, which shall only confer on it rights and obligations where explicitly stated. It will nevertheless endorse the Agreement to ensure that the Contracting Authority's contribution is actually paid by the EU budget, and the provisions on visibility in this Agreement will apply accordingly.

Article 2 - OBLIGATIONS REGARDING INFORMATION AND FINANCIAL AND NARRATIVE REPORTS

- 2.1 The Organisation shall provide the Contracting Authority with full information on the implementation of the Action. To that end, the Organisation shall provide before signature of this Agreement a work plan for the first period of implementation specified in the Description of the Action. The Organisation shall also draw up progress reports and a final report. These reports shall consist of a narrative part and a financial part. Reporting, narrative as well as financial, shall cover the whole of the Action, regardless of whether this Action is wholly financed or co-financed by the Contracting Authority.
- 2.2 The Contracting Authority may request additional information at any time, providing the reasons for the request. Such information shall be supplied within 30 days of the request.
- 2.3 The Organisation shall send the Contracting Authority progress reports in accordance with the provisions below. Every report shall provide a complete account of all aspects of implementation for the period covered.

The report shall be laid out in such a way as to allow comparison of the objective(s), the means envisaged or employed (in particular all expenses actually incurred by the Organisation), the results expected and obtained and the budget details for the Action.

The level of detail in any report should match that of the Description of the Action and of the Budget for the Action.

- 2.4 The narrative report shall directly relate to this Agreement and shall at least include:
- Summary and context of the Action;
 - Activities carried out during the reporting period (i.e. directly related to the Action description and activities foreseen in this Agreement);
 - Difficulties encountered and measures taken to overcome problems;
 - Changes introduced in implementation;
 - Achievements/results by using the indicators included in this Agreement;
 - Work plan for the following period including objectives and indicators of achievement. If the report is sent after the end of the period covered by the preceding work plan, a new work plan, albeit provisional, is always required before such date.
- 2.5 The final report shall contain the above information (excluding the last indent) covering the whole Implementation Period of this Agreement, information on the measures taken to identify the European Union as the source of financing and details on the transfers of assets mentioned in Article 7.3 if relevant, plus a full summary of the Action's income and expenditure and payments received.
- 2.6 The reports shall be presented in the same language as the Agreement. They shall be submitted at the following intervals:
- if payments follow option 1 in Article 15.1:
- a progress report shall be forwarded to the Contracting Authority at the end of every 12-month period, where the Implementation Period of this Agreement is longer;
 - a final report shall be forwarded to the Contracting Authority within six months of the end of the Implementation Period of this Agreement as defined in Article 2 of the Special Conditions;
- if payments follow option 2 in Article 15.1:
- a progress report shall accompany every request for interim payment / pre-financing;
 - the final report shall be forwarded to the Contracting Authority within six months of the end of the Implementation Period of this Agreement as defined in Article 2 of the Special Conditions.
- 2.7 Reports shall be submitted in Euro, and may be drawn from financial statements denominated in other currencies as per the Organisation's legislative requirements. In such case and for the purpose of reporting, conversion into Euro shall be made using the rate of exchange at which the Contracting Authority's contribution was recorded in the Organisation's accounts, unless otherwise specified in article 4(3) of the Special Conditions.
- 2.8 Any additional reporting requirement will be set out in the Special Conditions.

- 2.9 If the Organisation fails to supply a final report by the final report deadline laid down in Article 2.6, and fails to furnish an acceptable written explanation of the reasons why it is unable to comply with this obligation, the Contracting Authority may refuse to pay any outstanding amount and recover any amounts unduly paid.

Furthermore, where the Organisation fails to present a progress report and where relevant a request for payment by the end of each 12-month period following the date laid down in Article 2(2) of the Special Conditions, the Organisation shall inform the Contracting Authority of the reasons why it is unable to do so, and shall provide a summary of the state of progress of the Action. If the Organisation fails to comply with this obligation, the Contracting Authority may terminate the Agreement in accordance with the first indent of Article 12.2, refuse to pay any outstanding amount and recover any amounts unduly paid.

- 2.10 In addition to the above mentioned reports, the Organisation will ensure that progress and situation reports, publications, press releases and updates, relevant to this Agreement, are communicated to the Contracting Authority as and when they are issued.

The Organisation and the Contracting Authority will further endeavour to promote close collaboration and exchange of information on the Action. The Organisation will invite the European Commission to join any donor committee which may be set up in connection with Multi-Donor Actions.

- 2.11 In any event the Organisation shall inform the Contracting Authority without delay of any circumstances likely to hamper or delay the implementation of the Action.

Article 3 - LIABILITY

- 3.1 The Organisation shall have sole responsibility for complying with any legal obligation incumbent on it.
- 3.2 The Contracting Authority may not under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Organisation while the Action is being carried out or as a consequence of the Action. Therefore, the Contracting Authority may not accept any claim for compensation or increases in payment in connection with such damage or injury.
- 3.3 Subject to the rules governing the Organisation's privileges and immunities, the Organisation shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the Action. The Organisation shall discharge the Contracting Authority of all liability associated with any claim or action brought as a result of an infringement by the Organisation or the Organisation's employees or individuals for whom those employees are responsible of rules or regulations, or as a result of violation of a third party's rights.

Article 4 - CONFLICT OF INTERESTS

The Organisation undertakes to take all necessary precautions to avoid conflicts of interests and shall inform the Contracting Authority without delay of any situation constituting or likely to lead to any such conflict.

There is a conflict of interests where the impartial and objective exercise of the functions of any person under this Agreement is compromised for reasons involving

family, emotional life, political or national affinity, economic interest or any other shared interest with another party.

Article 5 - CONFIDENTIALITY

Subject to Article 16, the Contracting Authority and the Organisation undertake to preserve the confidentiality of any document, information or other material directly related to the Agreement and duly classified as confidential, until at least five years after the end date as specified in Article 12.5. Where the European Commission is not the Contracting Authority, it shall still have access to all documents communicated to the Contracting Authority, and will maintain the same confidentiality.

Article 6 - VISIBILITY AND TRANSPARENCY

- 6.1 Unless the European Commission requests or agrees otherwise, the Organisation shall take all appropriate measures to publicise the fact that the Action has received funding from the European Union. Information given to the press, the beneficiaries of the 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 logo (twelve yellow stars on a blue background). Such measures shall be carried out in accordance with the Communication and Visibility Manual for EU External Actions laid down and published by the European Commission, or any other guidelines agreed between the European Commission and the Organisation.

It is understood that the Organisation's equipment and vehicles may routinely carry its emblem and other indications of ownership prominently displayed. In cases where equipment or vehicles and major supplies have been purchased using funds provided by the European Union, the Organisation shall include appropriate acknowledgement on such vehicles, equipment and major supplies (including display of the European logo (twelve yellow stars on a blue background) provided that such actions do not jeopardise the Organisation's privileges and immunities and the safety and security of the Organisation's staff.

- 6.2 The size and prominence of the acknowledgement and European Union logo shall be clearly visible in a manner that will not create any confusion regarding the identification of the Action as an activity of the Organisation, the ownership of the equipment and supplies by the Organisation, and the application to the Action of the Organisation's privileges and immunities.
- 6.3 All publications by the Organisation pertaining to the Action, in whatever form and whatever medium, including the internet, shall carry the following or a similar disclaimer: "This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union."
- 6.4 If the equipment bought with a European Union contribution is not transferred to local partners of the Organisation or the final recipient of the Action at the latest when submitting the final report, the visibility requirements as regards this equipment (in particular display of the European logo) shall continue to apply between submission of the final report and the end of the overall project, programme or action of the Organisation, if the latter is longer.
- 6.5 Publicity pertaining to European Union contributions shall quote these contributions in Euro (€ or EUR), in parenthesis if necessary. The Organisation's publications and

reports prepared in response to, and in accordance with, its legislative directives are excluded from this provision.

- 6.6 The Organisation accepts that the Contracting Authority and the European Commission (where it is not the Contracting Authority) publish in any form and medium, including on their websites the name and address of the Organisation, the purpose of the contribution as well as the amount contributed and if relevant the percentage of co-financing.

Upon a duly substantiated request by the Organisation, the European Commission may agree to forego such publicity if disclosure of the above information would risk threatening the Organisation's safety or harming its interests.

- 6.7 With due regard to the applicable rules on confidentiality, security and protection of personal data, the Organisation shall publish, on an annual basis, including by electronic means such as Internet, the following information on grant and procurement contracts financed by the Contracting Authority: title of the contract/project, name and nationality of the contractor or grant beneficiary and amounts of the contract/project. For Multi-donor Actions, the level of information shall comply with the Organisation's rules and procedures pertaining to ex-post publicity.
- 6.8 The Organisation shall provide to the Contracting Authority the address of the website where this information can be found and shall authorise the publication of such address in the Contracting Authority's internet site.

The Organisation ensures that the obligation to publish this information shall be also applied by its implementing partners as described in Annex I of this Agreement, with regard to their own grant and procurement contracts financed by the Contracting Authority.

Article 7 - OWNERSHIP/USE OF RESULTS AND EQUIPMENT

- 7.1 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 Organisation, as the case may be together with third parties or as may otherwise be agreed by the Organisation.
- 7.2 Notwithstanding the provisions of the first paragraph and subject to Article 5, the Organisation shall grant the Contracting Authority (and the European Commission where it is not 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 it does not thereby breach existing industrial and intellectual property rights.
- 7.3 Unless otherwise specified in the Special Conditions, the equipment, vehicles and supplies paid for by the Contracting Authority's funding shall be transferred to local authorities or local partners (excluding commercial contractors) of the Organisation or to the final recipients of the Action at the latest when submitting the final report. The documentary proof of those transfers shall be kept for verification along with the documents mentioned in Article 16.3.

By way of derogation from the preceding paragraph, the equipment, vehicle and supplies purchased in the framework of multi-donor actions which continue after the end of the Implementation Period of this Agreement, may be transferred to these local authorities, partners or final recipients at the end of the project, programme or action of the Organisation. The Organisation pledges to use the assets to the benefit of those

benefiting from the present Action. The Organisation shall inform the Contracting Authority on the end use of the assets in the final report.

In the event that there are no local authorities or partners to whom the equipment, vehicles and supplies could be transferred, the Organisation may transfer the assets to another action funded by the European Union or Contracting Authority or, exceptionally, retain ownership of the equipment, vehicles and supplies at the end of the Action. In such cases, it should submit a justified written request with an inventory listing the items concerned and a proposal concerning their use in due time and at the latest with the submission of the final report. In no event may the end use jeopardize the sustainability of the Action or result in a profit for the Organisation.

Article 8 - EVALUATION OF THE ACTION

- 8.1 Representatives of the European Commission shall be invited to participate in the main monitoring and in the evaluation missions relating to the performance of the Action. The results of such missions shall be reported to the European Commission.
- 8.2 Article 8.1 is without prejudice to any evaluation mission which the European Commission as a donor may wish to perform. Evaluation missions by representatives of the European Commission should be planned and completed in a collaborative manner between the Organisation's staff and the European Commission's representatives, keeping in mind the commitment of the Parties to the effective and efficient operation of this Agreement. These missions are to be planned ahead and procedural matters are to be agreed upon by the European Commission and the Organisation in advance. The mission will offer to make a draft of its report available to the Organisation for comments prior to final issuance.

Article 9 - AMENDMENT OF THE AGREEMENT

- 9.1 Any modification to the Agreement, including the annexes thereto, shall be set out in writing in an amendment. This Agreement can only be modified during the execution period set out in Article 2(4) of the Special Conditions.

If the request for an amendment comes from the Organisation, the latter shall submit that request to the Contracting Authority one month before the amendment is intended to enter into force, and in any case no later than one month before the end of the execution period, unless there are special circumstances duly substantiated by the Organisation and accepted by the Contracting Authority.

- 9.2 Where a modification to the Description of the Action and/or the Budget does not affect the basic purpose of the Action and the financial impact is limited to a transfer within a single budget heading, including cancellation or introduction of an item, or a transfer between budget headings involving a variation (as the case may be in cumulative terms) of 15 % or less of the amount originally entered (or as modified by a formal amendment) in relation to each concerned heading for eligible costs, the Organisation may amend the Budget and shall inform the Contracting Authority accordingly in writing. This method shall not be used to amend headings for administrative costs or the contingency reserve.

Changes of address and changes of bank account may simply be notified in writing to the Contracting Authority. Changes of bank account must be specified in the request for payment, using the financial identification form attached as Annex IV.

Article 10 - CONTRACTING

- 10.1 If parts of the Action are contracted, the contracting arrangements, including in particular the principles for the award of procurement and grants, shall be as specified in the Description of the Action. If they are not specified therein, the Organisation will present them to the Contracting Authority as soon as they are available. The Organisation will also inform the Contracting Authority, with as much prior notice as possible, of changes in these arrangements. The Organisation will provide detailed information on contracting arrangements in the final report.
- 10.2 Unless otherwise agreed by the Parties in writing, the procurement of any goods, works or services and the award of grants by the Organisation and its partners in the context of the Action shall be carried out in accordance with the applicable rules and procedures adopted by the Organisation.

This is based on the understanding that the Organisation's rules and procedures conform to internationally accepted standards, in compliance with the principles of transparency, proportionality, sound financial management, equal treatment and non discrimination, care being taken to avoid any conflict of interests.

Without prejudice to the specific procedures and exceptions applied by the Organisation, the award by the Organisation of grants financed by the Contracting Authority's contribution shall comply with the following principles:

- grants shall not be cumulative, awarded retrospectively or have the purpose or effect of producing a profit for the grant beneficiary;
 - grants must involve co-financing from other donors, save in cases of humanitarian and crisis situation, the protection of health and fundamental rights of people, where the grant beneficiaries are third countries or other international organisations and where it is in the interest of the European Union to be the sole donor.
- 10.3 If allowed by the applicable regulatory provisions of the European Union, the origin of the goods and the nationality of the organisations, companies and experts selected for carrying out activities in the Action shall be determined in accordance with the Organisation's relevant rules. In any event goods, organisations, companies and experts eligible under the applicable regulatory provisions of the European Union shall be eligible.
- In all other cases the partners, contractors, experts and goods, the cost of which are financed out of the Contracting Authority's contribution, shall originate in the European Union or the country or countries eligible under the programme of which the Action is part. Any departure from the rules of origin and nationality set out above is subject to the specific provisions of the applicable regulatory provisions of the European Union.
- 10.4 The Organisation shall adopt reasonable measures, in accordance with its own procedures, to ensure that potential candidates or tenderers and grant beneficiaries shall be excluded from the participation in a procurement or award procedure financed by the Contracting Authority's contribution, if these persons:
- are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the EU's financial interests;
- are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or if they fail to supply this information.
- expose a conflict of interest.

10.5 In the event of failure to comply with the above provisions the relevant costs shall not be eligible for funding by the Contracting Authority.

Article 11 - IMPLEMENTATION PERIOD OF THE AGREEMENT, SUSPENSION, FORCE MAJEURE

- 11.1 Irrespective of the starting date and implementation period of the project, programme or action of the Organisation, the Implementation Period of this Agreement shall be as set out in Article 2 of the Special Conditions
- 11.2 The Organisation may suspend without delay implementation of all or part of the Action if circumstances so require, in particular in case of *force majeure*, and informs the Contracting Authority immediately providing all the necessary details. This Agreement may be terminated in accordance with Article 12.1. If the Agreement is not terminated, the Organisation 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 Authority accordingly.
- 11.3 The Contracting Authority may request the Organisation to suspend implementation of all or part of the Action if circumstances so require in particular in case of *force majeure*. This Agreement may be terminated in accordance with Article 12.1. If the Agreement is not terminated, the Organisation shall endeavour to minimise the duration of the suspension and shall resume implementation of the Action once the conditions allow, with the prior written approval of the Contracting Authority.
- 11.4 The Implementation Period of this Agreement is automatically extended by an amount of time equivalent to the duration of the suspension. This is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions or to Article 12.1.
- 11.5 *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. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as *force majeure* by the defaulting party. Neither of the Parties shall be held liable for breach of its obligations under the Agreement if it is prevented from fulfilling them by *force majeure*. Without prejudice to Articles 11.2 and 11.3 above, the Party invoking *force majeure* shall notify the other without delay, stating the nature, likely duration and foreseeable effect, and take any measure to minimise possible damage.

Article 12 - TERMINATION OF THE AGREEMENT

12.1 If, at any time, either Party believes that the purposes of this Agreement can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, either Party may terminate this Agreement by serving two months' written notice. In this event, the Organisation shall be entitled to payment of the contribution only for the part of the Action carried out, and to reimbursement of commitments entered into by the Organisation for the implementation of the Action, which the Organisation cannot reasonably terminate on legal grounds. The part of the EU contribution unspent or not spent in accordance with this Agreement, shall be recovered by the Contracting Authority in accordance with Articles 17 and 18, after all liabilities incurred by the Organisation have been satisfied, including interest earned where applicable.

12.2 Where the Organisation:

- fails, without justification, to fulfil any of the obligations incumbent on it and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of sending of the letter;
- fails to comply with articles 1.5, 1.6 or 4;
- makes false or incomplete statements to obtain the contribution provided for in the Agreement or provides reports that do not reflect reality;
- commits financial irregularities or is guilty of grave professional misconduct;
- undergoes legal, financial, technical or organisational change that is liable to affect this Agreement substantially or to call the award decision into question;

the Contracting Authority will enter into discussions with the Organisation and, failing a proper solution within one month, may terminate this Agreement, after giving seven days' notice, and without paying compensation of any kind. In that event the Contracting Authority may demand full or partial repayment of any amounts unduly paid, after allowing the Organisation to submit its observations.

12.3 Prior to or instead of terminating the Agreement as provided for in Article 12.2, the Contracting Authority may suspend payments or the declaration of eligibility of expenses as a precautionary measure, informing the Organisation immediately.

12.4 This Agreement shall be automatically terminated if it has not given rise to a payment by the Contracting Authority (including pre-financing) within three years of its signature.

12.5 Unless this Agreement is earlier terminated pursuant to Article 12, the payment obligations of the European Union hereunder shall cease at the "end date", which shall occur 18 months after the end of the Implementation Period as defined in Article 2 of the Special Conditions.

The Contracting Authority notifies the Organisation of any postponement of the end date. The Contracting Authority shall postpone the end date, so as to be able to fulfil its payment obligations, in all cases where the Organisation has filed the payment request in accordance with contractual provisions or, in case of dispute, until completion of the dispute settlement procedure provided for in Article 13.

Article 13 - SETTLEMENT OF DISPUTES

- 13.1 The Parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or fulfilment of this Agreement, including its existence, validity or termination. In default of amicable settlement, any Party may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of conclusion of this Agreement.
- 13.2 The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either Party. The Arbitrator's decision shall be binding on all Parties and there shall be no appeal.
- 13.3 Nothing in this Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party hereto by its constituent documents or international law.

FINANCIAL PROVISIONS

Article 14 - ELIGIBLE COSTS

- 14.1 To be considered eligible as direct costs under this Agreement, costs must:
 - be necessary for carrying out the Action, be provided for specifically in this Agreement and comply with the principles of sound financial management, in particular value for money and cost-effectiveness;
 - have been actually incurred during the Implementation Period of this Agreement as defined in Article 2 of the Special Conditions with the exception of costs relating to final reports, expenditure verification and evaluation of the Action, whatever the time of actual disbursement by the Organisation.
 - be recorded in the Organisation's or Organisation's partners' accounts, be identifiable, backed by effective supporting evidence (originals, as the case may be in electronic form), and verifiable pursuant to the provisions of Article 16.4.
- 14.2 Subject to the above and without prejudice to Article 10.5, the following direct costs of the Organisation or its implementing partners may in particular be eligible:
 - the cost of staff assigned to the Action, corresponding to actual salaries plus social security charges and other remuneration-related costs (including in the form of provisions made in accordance with the Organisation accounting rules in case of Joint Management Action). Identifiable personnel costs at headquarters level arising as a direct consequence of the Action may be included. Salaries and costs shall not exceed those normally borne by the Organisation or partners;
 - travel and subsistence costs for staff taking part in the Action, provided they do not exceed those normally borne by the Organisation or partners;
 - purchase costs for equipment (new or used) which are attributable to the Action;
 - purchase costs for goods and services (transport, storage and distributing, rent of equipment, etc.) which are directly attributable to the Action;

- costs directly arising out of, or related to, accepting or distributing contributions in kind;
- costs of consumables and supplies directly attributable to the Action;
- expenditure on contracting directly attributable to the Action;
- the proportion of field office costs that corresponds to the amount of activity directly attributable to the Action or to the proportion of funding by the Contracting Authority;
- costs deriving directly from the requirements of this Agreement (dissemination of information, evaluation specific to the Action, specific reporting for the needs of the Contracting Authority, translation, reproduction, insurance, targeted training for those involved in the Action, etc.) including financial service costs (in particular bank fees for transfers).

14.3 The following costs shall not be considered eligible, whether or not presented as being related to the Action:

- debts and debts service charges;
- provisions for losses or potential future liabilities;
- interest owed by the Organisation to any third party;
- items already financed from other sources;
- purchases of land or buildings;
- currency exchange losses;
- taxes, duties and charges charged to the Organisation, unless the Organisation (or, where applicable, its partners) can show it cannot reclaim them and the applicable regulations do not exclude coverage of taxes.

14.4 A fixed percentage of direct eligible costs, not exceeding 7%, may be claimed as indirect costs by the Organisation to cover the administrative overheads incurred for the Action. The resulting funding in respect of indirect costs does not need to be supported by accounting documents.

Subject to the above, for comparable Actions and Actions where there is more than one donor the amount claimed as indirect costs shall not, in percentage terms, be higher or lower than for other comparable contributions.

Indirect costs are eligible provided that they do not include costs assigned to another heading of the budget of this Agreement.

Indirect costs may be charged on the value of in-kind commodities delivered by the Contracting Authority, including their associated costs.

Where the rates applied in accordance with the Organisation's governing bodies' decisions exceed 7%, the Organisation may recover the balance as direct eligible costs, subject to the provisions governing direct eligible costs referred to in this Article 14 being fulfilled.

Indirect costs shall not be eligible where the Agreement concerns the financing of an action where the Organisation is already receiving an operating grant from the European Union during the period in question.

- 14.5 Any contingency reserve included in the Budget of the Action, to cover any adjustment necessary in the light of changed circumstances on the ground, may not exceed 5% of eligible costs and shall only be used with the prior written (by letter) authorisation of the Contracting Authority, upon a duly justified request from the Organisation.
- 14.6 Contributions in kind made by the Organisation or its partners may be considered neither as co-financing nor as eligible costs. The cost of staff assigned to the Action is not a contribution in kind and may be considered as co-financing in the Budget for the Action when paid by the Organisation or its partners.

Article 15 - PAYMENTS

- 15.1 Payment procedures are set out in Article 4 of the Special Conditions and follow one of the two options below:

Option 1: When the implementation period of the Agreement does not exceed 12 months or the contribution is less than EUR 100 000

The Contracting Authority will provide a pre-financing from 80% up to 95% of the sum referred to in Article 3(2) of the Special Conditions less contingencies within 45 days of receiving the Agreement signed by both Parties.

The Contracting Authority will pay the balance within 45 days of approving the final report.

Option 2: When the implementation period of the Agreement exceeds 12 months and the contribution is of EUR 100 000 or more

The Contracting Authority will provide a pre-financing from 80% to 95% of that part of the forecast budget for the first 12 months of the Action which is being financed by it (excluding contingencies) within 45 days of receiving the Agreement signed by both Parties.

Each further instalment will consist of (1) an interim payment that will cover the remainder of the Contracting Authority's part of the actual budget for the previous period (including any approved contingencies) and (2) a pre-financing from 80% to 95% of that part of the forecast budget for the subsequent 12-month period (or of the remaining period if shorter as regards the last instalment of pre-financing) which is financed by it (excluding contingencies), and be made by the Contracting Authority within 45 days of approving a progress report, provided that at least 70% of the immediately preceding instalments (and 100% of previous instalments if any) has been incurred, as proven by the relevant report. For the purpose of this Agreement funds are incurred when they are the subject of a formal legal commitment between the Organisation (or its partners) and a third party. The Contracting Authority will pay the balance within 45 days of approving the final report.

- 15.2 Any report will be deemed approved 45 days after receipt, accompanied by a request for payment conforming to the model attached as Annex V, if the Contracting Authority has not reacted.

If the Contracting Authority does not intend to approve a report, as submitted, it shall revert to the Organisation with a request explaining the reason and specifying the additional information it requires within the first 45-day period. The deadline for approving the report shall be suspended pending the receipt of the requested information. If the Contracting Authority deems that a payment request cannot be met, it shall revert to the Organisation with a request explaining the reason and specifying the additional information it requires within the second 45-day period. The payment period shall be suspended pending the registration of a properly formulated payment request.

Reports shall be presented in accordance with the stipulations of Article 2.

Approval of a report does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information contained therein.

- 15.3 On expiry of the payment period specified in Article 15.1, the Organisation may, within two months of receiving late payment, demand interest at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first day of the month in which payment was due, increased by three and a half percentage points.

The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.

The interest shall not be treated as an income for the purposes of determining the final amount of European Union financing within the meaning of article 17. The suspension of payment by the Contracting Authority may not be considered as late payment.

- 15.4 The level of pre-financing referred to in Article 15.1 above shall be set at a level of between 80% and 95 % in 5% increments taking into account past record of the Organisation in particular as regards timely submission of the final report.
- 15.5 The Contracting Authority will make payments in Euro into the bank account referred to in the financial identification form in Annex IV. Where payment is to be made to a bank account which is already known to the Contracting Authority, the Organisation may provide a copy of the relevant financial identification form.
- 15.6 Where feasible, the funds paid by the Contracting Authority shall be maintained in Euro denominated bank accounts. They may be pooled together with contributions from other donors. They may be exchanged for other currencies in order to facilitate their disbursement.
- 15.7 For Joint Management and/or Multi-Donor Actions, the Organisation's rules and procedures pertaining to bank interest shall apply, and an equal treatment among donors shall be ensured. This is based on the understanding that these rules and procedures conform to internationally accepted standards.

In all other cases, interest earned by the Organisation on funds received from the Contracting Authority shall be identified as such and reflected in reports to the Contracting Authority. In such cases, subject to the conditions provided for in the applicable regulations of the European Union:

- for pre-financing equal or below EUR 250 000 (or for crisis management, equal or below EUR 750 000 per agreement at the end of each financial year and for projects

of a duration of more than 12 months), interests earned on such pre-financing shall not be due to the Contracting Authority.

- for pre-financing exceeding the amounts indicated above and below EUR 750 000 (except in case of crisis management), interest earned on such pre-financing shall be assigned to the Action and deducted from the payment of the final amount due to the Organisation, unless the Contracting Authority requests the Organisation to reimburse the interest generated by pre-financing before the payment of the balance.
- for pre-financing exceeding EUR 750 000, the amount of earned interests on such pre-financing shall be recovered by the Contracting Authority for each reporting period following the implementation of the Agreement at the end of the financial year.

Article 16 - ACCOUNTS AND TECHNICAL AND FINANCIAL CHECKS

16.1 The Organisation shall keep accurate and regular records and accounts of the implementation of the Action. Separate accounts or sub-accounts shall be kept for each Action, and shall detail all income and expenditure.

The accounting regulations and rules of the Organisation shall apply. This is based on the understanding that these regulations and rules conform to internationally accepted standards.

16.2 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 Organisation. A copy of the audited financial statements shall be submitted to the European Commission by the Organisation.

16.3 The Organisation shall, until at least five years after the end date as specified in article 12.5:

- keep financial accounting documents concerning the activities financed by the contribution and,
- make available to the competent bodies of the European Union, upon request, all relevant financial information, including statements of accounts concerning the Action, whether they are executed by the Organisation or by its implementing partners or contractors.

16.4 In conformity with its financial regulations, the European Union, including its Court of Auditors, may undertake, including on the spot, checks related to the Actions financed by the Contracting authority.

16.5 These provisions shall be applied in accordance with any specific agreement concluded in this respect by the Organisation and the European Union.

Article 17 - FINAL AMOUNT OF FINANCING BY THE CONTRACTING AUTHORITY

17.1 The final amount to be paid by the Contracting Authority to the Organisation shall not exceed the maximum contribution established by Article 3(2) of the Special Conditions, even if the overall actual expenditure exceeds the estimated total budget set out in Annex III.

17.2 Where Article 3(2) of the Special Conditions sets out a maximum percentage of estimated total eligible cost to be financed by the Contracting Authority, and if the eligible costs at the end of the Action are less than the estimated total cost specified in Article 3(1) of the Special Conditions, the contribution of the Contracting Authority may be limited to the amount resulting from multiplying the actual expenditure by the percentage laid down in Article 3(2) of the Special Conditions.

Where the percentage set out in article 3(2) of the Special Conditions is likely to change in the course of implementation, the Organisation shall consult the Contracting Authority without delay so as to agree on appropriate measures, in accordance with Article 9.

17.3 The Organisation accepts that the contribution of the Contracting Authority shall be limited to the amount required to balance income and expenditure for the Action and that it may not in any circumstances result in a surplus for the Organisation.

In the event of a final surplus balance of total financing over expenditures at the financial closure of the Action, the Organisation shall specify in the final report the amount of the surplus balance in the holding currency used by the Organisation together with the estimated amount in Euro and where the exchange rate of the Organisation can be consulted. This surplus in the Organisation's accounts expressed in holding currency used by the Organisation shall be converted into Euro using the rate of exchange of the Organisation in force on the day when the Contracting Authority's internal recovery order is established, which amount is later reflected in the debit note sent to the Organisation. The resulting Euro equivalent shall then be refunded to the Contracting Authority. This provision shall not apply to the exchange rates used for reporting.

- 17.4 In cases where the Action is suspended or not completed within the Implementation Period of this Agreement, the funds that remain unexpended after all liabilities incurred in this period have been satisfied, including interest earned where applicable, will be reimbursed to the Contracting Authority.
- 17.5 Where the Action is not carried out at all, or is not carried out properly, in full or on time and without prejudice to its right to terminate this Agreement pursuant to Article 12.2, the Contracting Authority may, after allowing the Organisation to submit its observations and without prejudice to Article 13, reduce the contribution pro rata the actual implementation of the Action on the terms laid down in this Agreement.

Article 18 - RECOVERY

- 18.1 Where recovery is justified, the Organisation shall repay to the Contracting Authority within 45 days of the issuing of a letter (debit note) by which the Contracting Authority reclaims from the Organisation, any amounts paid in excess of the final amount due.
- 18.2 If the Organisation fails to repay by the due date, the sum due shall bear interest at the rate indicated in article 15.3. The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.
- 18.3 Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Organisation, after informing it accordingly. The Organisation's prior consent is not required. This shall not affect the Parties' option to agree on payment in instalments.
- 18.4 Bank charges incurred from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Organisation.

Annex III Budget	Total Cost (in EUR)	Year 1	Year 2	Year 3	Year 4
a. Component 1. Peatlands:	4,000,000	1,221,594	1,625,696	963,796	188,914
Peatlands Belarus	1,400,000	453,694	486,196	271,196	188,914
Peatlands Russia	800,000	253,000	342,000	205,000	0
Peatlands Ukraine	1,800,000	514,900	797,500	487,600	0
b. Component 2. Permafrost and boreal forests:	2,500,000	643,000	890,000	577,000	390,000
Protection of permafrost and boreal forest areas	800,000	170,000	369,000	179,000	82,000
Pilot permafrost restoration	1,000,000	165,000	307,000	314,000	214,000
Monitoring and research	700,000	308,000	214,000	84,000	94,000
c. Component 3. Pasture management	3,500,000	463,452	1,360,279	1,089,198	587,071
Armenia	1,000,000	211,558	604,027	184,415	0
Azerbaijan	1,000,000	133,500	295,800	314,900	255,800
Georgia	1,000,000	68,394	360,452	439,883	131,271
Moldova*	500,000	50,000	100,000	150,000	200,000
d. Component 4. Monitoring and evaluation, communication, knowledge management	280,374	70,094	70,092	70,094	70,094
Travel	32,000	8,000	8,000	8,000	8,000
Monitoring and evaluation, communication, knowledge management	248,374	62,094	62,092	62,094	62,094
Total direct costs (a-d)	10,280,374	2,398,140	3,946,067	2,700,088	1,236,079
Indirect costs	719,626	167,870	276,225	189,006	86,525
Total eligible costs	11,000,000	2,566,010	4,222,292	2,889,094	1,322,604

* The work program for this amount will be decided upon in the inception phase of the project.

** The notion of a "budget heading" referred to in Art. 9.2 of the General Conditions relates a "component" set out in the present Budget

