

Annex XI: Considerations for legal and formal arrangements with accredited entities

I. Form of agreement

1. The legal and formal arrangements with accredited entities is first and foremost a reflection of the successful accreditation by the Board and completion of the accreditation review process. This process is based on the fit-for-purpose accreditation approach, approved by the Board in decision B.08/02. The fit-for-purpose approach recognizes the role of a wide range of entities, which differ in the scope and nature of their activities, as well as their capacities. For this reason, the Fund cannot develop a “one size fits all” legal and formal arrangement. A distinction will have to be made between various types of entities and their type of accreditation.

2. Depending on the type of Accredited Entity, the relationship between the Fund and such an entity would take the form of either a legal agreement (contract governed by private law) or a legal arrangement (arrangement governed by international public law). A contract is typically entered into with a private-sector entity or state-owned enterprise, or takes the form of a legal arrangement with another international organization (e.g. United Nations organization, multilateral development banks or international financial institutions). In this document, the term agreement or contract will be used and includes for the purpose of this document any other form of legal arrangement.

3. The Fund intends to standardize the legal documents where possible and develop general conditions applicable to all grants and loans. It will take precedents of other climate funds into account, bearing in mind the different, paradigm shift, nature of the Fund, as well as lessons learned by implementing entities and those other climate funds. It is also proposed that the legal documents be developed in consultation with the accredited entities, so that their concerns can be addressed at an early stage and the Fund can benefit from their experience of working with other funds.

4. In view of the fit-for-purpose accreditation, the Fund intends to develop a number of standardized templates over time in order to reflect, among other matters, the type of accreditation and the nature of the Accredited Entity’s activities.

II. Structure of agreement

5. Upon accreditation, it is proposed that the Fund shall enter into an accreditation master agreement (AMA) with the Accredited Entity, which shall set out the general terms and conditions of the services to be rendered by the entity for the Fund under its accreditation.

6. Upon the Board’s approval of a specific project or programme activity, it is then proposed that the Fund and the Accredited Entity shall enter into a concise project confirmation, a form of which shall be attached to the AMA, which sets out the specifics of the approved project or programme activity.

III. Contents of accreditation master agreement

7. The AMA containing general terms and conditions may include, but shall not be limited to, the following provisions, depending also on the scope of accreditation and the fit-for-purpose approach

- (a) Definitions;
- (b) Term of contract;
- (c) Conditions precedent;
- (d) Project/programme pipeline preparation;
- (e) Use of accredited entities' standard forms of loan, grant and other agreements;
- (f) Procedures for stakeholders' input;
- (g) Involvement of national designated authority (NDA)/focal point; condition for approving project and disbursing funds will be NDA/focal point no-objection;
- (h) Project cycle, including internal approval processes;
- (i) Procedure for project confirmations;
- (j) Adherence to guidelines from the Fund, including the fiduciary standards and the environmental and social safeguards. This is part of the accreditation process and needs to be confirmed in the AMA. Any conditions, requirements or recommendations from the Accreditation Panel and adopted by the Board would need to be reflected;
- (k) Applicability of policies decided by the Board relevant to the operations of the Fund, including the role of accredited entities, reporting and evaluation;
- (l) Disbursement of funds and fees, including reflow of funds provided but not disbursed;
- (m) Fiduciary standards, such as applicable "know your client", anti-money laundering, countering financing of terrorism, anti-corruption, and other fraudulent practices and sanction regulations, including the right to instruct the Accredited Entity to seek restitution of misused funds under certain circumstances for breach of fiduciary standards;
- (n) Conflicts of interest;
- (o) Administration, record keeping and reporting requirements, including of project/programme indicators required for the Fund's results management framework;
- (p) Periodic reviews/spot checks by the Secretariat, the Evaluation Unit and the Integrity Unit, including access to documents, data, premises and project locations, subject to applicable privileges and immunities;
- (q) Cooperation between the Integrity Unit and the integrity unit of the Accredited Entity;
- (r) The right of the Fund to revise, suspend or revoke accreditation or amend the applicable terms and conditions on the basis of the outcome of the periodic or ad hoc review;¹
- (s) Events of default;
- (t) Remedies in the event of default, including suspension of payments, termination of contract, liability for costs and damages and repayment of funds;
- (u) Evaluation after termination/implementation of a project or programme activity;
- (v) Gender issues, reflecting the relevant Board decision;
- (w) Branding;
- (x) Ownership of equipment, industrial property rights;

¹ The Board is to develop a Monitoring and Accountability Framework for accredited entities (Decision B.08/02 (e)) in the course of 2015, the outcome of which will be part of the AMA. Reference thereto should already be made in the AMA at this stage.

- (y) Notices/communication;
- (z) Confidentiality/(Interim) disclosure policy, AMA and each project confirmation to be made publically available, omitting any information that is deemed sensitive by the Accredited Entity;
- (aa) Cooperation with the Redress Mechanism;
- (bb) Mutual, if applicable, privileges and immunities;
- (cc) Applicable law: for AMAs with private-sector entities and state-owned enterprises, a specific law is to be applied. For arrangements with international organizations, international public law is the preferred law. In both cases the laws of the relevant host country are to be respected;
- (dd) Dispute resolution; and
- (ee) As an annex, the form of project confirmation.

IV. Contents of project confirmation

8. The project confirmation will set out specifics for a specific project or programme activity and will be executed upon Board approval of the specific project or programme activity. The project confirmation will be produced based on, and at the time of, Board approval.