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Resilient nations.*

AGREEMENT

between the

EUROPEAN INVESTMENT BANK

and the

UNITED NATIONS DEVELOPMENT PROGRAMME

in respect of advisory support to be provided to public authorities and publicly-owned communal enterprises in Ukraine in support of the implementation of certain energy efficiency investment sub-projects

Berlin, 25th October 2022



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THIS AGREEMENT (THE "**AGREEMENT**") IS MADE BETWEEN:

The EUROPEAN INVESTMENT BANK, having its seat at 98-100, Konrad Adenauer boulevard,
L-2950 Luxembourg, Grand Duchy of Luxembourg,

(the "**EIB**")

of the first part, and

The UNITED NATIONS DEVELOPMENT PROGRAMME, having its headquarters at One UN Plaza,
New York, NY 10017, United States of America,

(the "**UNDP**")

each, a Party and together the Parties.

WHEREAS:

- A. The **EIB** was established by Article 308 of the *Treaty on the Functioning of the European Union* with a view to contributing to the balanced and steady development of the internal market in the interest of the Union. Further, under the terms laid down in its Statute, the **EIB** shall contribute to the implementation of the development cooperation policy of the Union. For this purpose, pursuant to Article 14 of its Statutes, the **EIB** shall cooperate with all international organisations active in fields similar to its own.
- B. The **UNDP** serves in many respects as the operational arm of the United Nations at the country level and cooperates with the Governments of its member States and with development partners to promote among other things sustainable development, eradication of poverty, advancement of women, good governance and the rule of law.
- C. In the context of the *Energy Efficiency Support Programme for Ukraine* (EE4U) initiated by the **Commission**, the **UNDP** is providing advisory support to the Government and other public authorities of Ukraine with a view to contributing to the energy efficiency by reducing energy consumption and costs in the residential sector. Building on this ongoing support, the Parties agreed to set up the **Action** to assist the **Promoter** and the **Beneficiaries** supported under the **Finance Contract** throughout the entire energy efficiency related **Sub-Project** cycle, including: design review, procurement, contract administration, monitoring and supervision of construction, commissioning, testing and acceptance.
- D. On 6 November 2020, the **Assembly of Contributors** of the **E5P Fund** approved, at the request of the **EIB**, a financial envelope of EUR 4,000,000 to support the implementation of the Ukraine Public Buildings Energy Efficiency Initiative, to be managed by the **EIB** under the terms of the **Financing Documentation**. An amount corresponding to the **Contribution** has been earmarked, under the aforementioned financial envelope, for the purposes of implementing the **Action**.
- E. The **EIB** considers that access to information plays an essential role in the reduction of environmental and social risks, including human rights violations, linked to the projects it finances and has therefore established its *Transparency Policy* (as published from time to time on its website), the purpose of which is to enhance the accountability of the **EIB** towards its stakeholders and the citizens of the European Union in general.

- F. The processing of personal data shall be carried out by the **EIB** in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (*OJ L 295, 21.11.2018, p.39*). Details concerning the processing of Personal Data by the **EIB** are available in the data protection notice available at: <https://www.eib.org/en/privacy/index.htm>.

NOW THEREFORE it is hereby agreed as follows:

ARTICLE 1 – Definitions and interpretation

- 1.1. Wherever used in this **Agreement**, the following terms shall have the meanings opposite them:

Action	means the activities to be carried out and outputs to be delivered by the UNDP , as further described in Annex A, the eligible costs of which are financed, in whole or in part, by the Contribution under the terms of this Agreement .
Arbitration Rules	means the UNCITRAL Arbitration Rules in effect on the date of this Agreement
Assembly of Contributors	means the governing body of the E5P Fund , made up of representatives of the Contributors .
Beneficiary	means any local state administration or body of local self-government, or any communal enterprise (other than a private enterprise) that receives (i) financial support from the EIB under the Finance Contract and/or (ii) advisory support from the UNDP under the Action for the purpose of developing and implementing a Sub-Project .
Commission	means the <i>European Commission</i>
Confidential Information	means any document, information or other material provided by one Party (the Disclosing Party) to the other (the Receiving Party) in the performance of their obligations under this Agreement and which is, cumulatively, in written or other permanent (including electronic) form, and clearly and conspicuously marked, in writing, as “confidential” or “proprietary”.
Contribution	means the financial contribution in the form of a grant, as detailed in Article 5, which is made available to the UNDP by the EIB from the financial envelope managed by the EIB under the Mandate in accordance with the Financing Documentation , with a view to covering the eligible costs of the Action , as such costs are defined in Article 5.
Contributor	has the meaning ascribed to it in the definition of Mandate
Disclosing Party	has the meaning ascribed to it in the definition of Confidential Information
E5P Fund	has the meaning ascribed to it in the definition of Mandate
EBRD	means the <i>European Bank for Reconstruction and Development</i> .

EPPO	means the <i>European Public Prosecutor's Office</i> in respect of those European Union Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (<i>OJ L 283, 31.10.2017, p.1</i>)
Finance Contract	means the finance contract entered into between the EIB and the Ukraine, dated 6 October 2020, whereby the EIB agreed to make available to the Ukraine a credit line in amount of up to EUR 300,000,000 (the Framework Loan) to support investments in energy efficiency refurbishments in public buildings to be implemented in the territory of Ukraine by Beneficiaries (each such operation constituting a Sub-Project and collectively the Project for the purposes of this Agreement). In addition to energy efficiency renovations, the Framework Loan may also be used to finance other measures (up to 50% of project costs) including for repairs and adjustments urgently needed to better suit the needs of Internally Displaced Persons (IDPs) of Ukraine.
Financing Documentation	means the <i>Funding Agreement between the European Investment Bank as Implementing Agency and the European Bank for Reconstruction and Development as Fund Manager in respect of the Ukraine Public Buildings Energy Efficiency Project</i> , dated 24 June 2021, as amended, supplemented or restated from time to time. <i>For the avoidance of doubt, the Financing Documentation is not incorporated by reference into this Agreement and does not directly create any obligations for the UNDP.</i>
Force Majeure	means any unforeseeable exceptional situation or event beyond the control of the Party affected, which is not attributable to error or negligence on its part or any of its agents, employees or contractors, proves insurmountable in spite of all due diligence, and prevents that Party from fulfilling any of its obligations under this Agreement . Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as Force Majeure .
Framework Loan	has the meaning ascribed to it in the definition of Finance Contract
Intellectual Property Rights	means any copyright and related rights, rights in designs, database rights, rights in computer software, domain names, trademarks, service marks, patents, trade names or any applications for any of the foregoing, rights in confidential information (including know-how and trade secrets) or similar rights or obligations, moral rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.
Mandate	means the <i>Eastern Europe Energy Efficiency and Environment Partnership Fund</i> (the E5P Fund), established by the EBRD , which acts as <i>Fund Manager</i> and manages and administers the E5P Fund on behalf of the contributors thereto (each, a Contributor), including the Union , in cooperation with eligible international financial institutions which may act as implementing agencies for initiatives supported by the E5P Fund resources.
OLAF	means the <i>European Anti-Fraud Office</i> , established by Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 (<i>OJ L 136, 31.5.1999, p.20</i>)

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| Performance Period | means the period of time, specified in Article 2.3, during which all activities comprising the Action have to be implemented, and all corresponding costs eligible to be financed from the Contribution have to be incurred by the UNDP .
<i>For the sake of clarity, payments or disbursements made by the UNDP in advance of the receipt or the execution of the services, supplies, and/or works it intends to finance, in whole or in part, from the Contribution, do not constitute a cost incurred for the purposes of the preceding.</i> |
| Project | has the meaning ascribed to it in the definition of Finance Contract |
| Promoter | means the Ministry of Communities and Territorial Development of Ukraine |
| Receiving Party | has the meaning ascribed to it in the definition of Confidential Information |
| Sub-Project | has the meaning ascribed to it in the definition of Finance Contract |
| Union | means the <i>European Union</i> |
- 1.2. In the event that a different meaning is given to a capitalized term in a particular Annex, such definition will have the meaning given to it in that Annex solely for the purposes of that Annex.
 - 1.3. Unless otherwise specified, references to Recitals, Articles, or Annexes (capitalised) are references to such recitals or articles of, or annexes to this **Agreement**.
 - 1.4. References to a public organisation will include its successors, and if a public organisation ceases to exist or ceases to perform its functions without a successor, references to such public organisation will be deemed to include a reference to any public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.
 - 1.5. Unless expressly provided otherwise in this **Agreement**, references to any law, including any statutes or legal acts specifically referred to herein, whether or not amendments or successors to such laws are referred to herein, are to be construed as references to that law as amended from time to time, or to any law covering the same or similar subject matter replacing, extending, consolidating or amending the same from time to time.
 - 1.6. References containing terms such as "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", will not be deemed limited by the specific enumeration of items but will, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
 - 1.7. General words introduced or followed by the word "other" or "including" or "such as" or "in particular" will not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
 - 1.8. Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each gender include all other genders.

ARTICLE 2 – Entry into force and duration

- 2.1. This **Agreement** sets out the rights and obligations of the Parties in relation to the transfer of the **Contribution** from the **EIB** to the **UNDP** and to the use of that **Contribution** by the **UNDP** for the implementation of the **Action**.
- 2.2. The **Agreement** is effective from the date of its signature by the last of the Parties and, unless it is otherwise terminated in accordance with Article 17, remains valid and effective until (i) the final amount of the **Contribution** is confirmed and funds transferred by the **EIB** in excess of such amount, if any, are repaid to the **EIB** in accordance with Articles 6 and/or 18 or (ii) in case of a dispute, until completion of the dispute settlement procedure provided for in Article 22.

- 2.3. The **Performance Period** starts on the date of entry into force of this **Agreement** and ends on 31 December 2025.
- 2.4. The **Agreement** consists of these executed terms, the Recitals, and the following Annexes:
- Annex A: The Action
 - Part I: Description of the Action
 - Part II: Budget of the Action
 - Annex B.1: Request for disbursement form
 - Annex B.2: Model Management Declaration

In the event of any ambiguities, conflicts or inconsistencies between these executed terms and the Recitals or the provisions of any of the Annexes, these executed terms shall take precedence.

ARTICLE 3 – Implementation of the Action

- 3.1. The **UNDP** is solely responsible for implementing the **Action** as described in Annex A. The **UNDP** shall implement the **Action** exclusively through its own personnel.
- 3.2. The personnel that the **UNDP** assigns, at any time, to the implementation of the **Action** shall not be considered in any respect as being employees or agents of the **EIB**.
- 3.3. The Parties shall endeavour to strengthen their mutual contacts with a view to foster the exchange of information throughout the implementation of the **Action**. To this end, the **EIB** and the **UNDP** shall participate in coordination meetings and other jointly organised common activities, and the **UNDP** shall invite the **EIB** to join any donor committee which may be set up in relation to the **Action**.
- 3.4. The **UNDP** confirms that it has an effective and efficient internal control system that shall be applied throughout the **Performance Period**, and that such system allows the **UNDP** to provide reasonable assurance with respect to:
- (a) the effectiveness, efficiency and economy of the transactions;
 - (b) the reliability of reporting;
 - (c) safeguarding of assets and information;
 - (d) prevention, detection, addressing and follow-up of fraud, corruption, and other possible misconduct or wrongdoing, as these are defined in the **UNDP**'s applicable rules, regulations, policies and procedures;
 - (e) adequate management of the risks relating to the legality and regularity of the financial transactions.
- 3.5. The **UNDP** shall implement the **Action** and administer the **Contribution** in accordance with its own rules, regulations, policies, and procedures and the terms of this **Agreement**. The **UNDP** undertakes to make available all necessary resources, including human resources, required for this purpose, ensure a sound financial management of the **Contribution**, and apply the same level of duty, care and diligence which it applies in managing funds contributed to it by the **Union**.
- 3.6. Where the **UNDP** considers, acting reasonably, that an event has occurred that is likely to affect or delay the implementation of the **Action** in any material respect, it must inform the **EIB** promptly. The Parties shall consult with a view to finding a mutually acceptable strategy to address such situation.
- 3.7. In performing its obligations under this **Agreement**, the **UNDP** shall promote the respect of human rights and respect applicable environmental and social international standards and agreements, as well as applicable internationally agreed core labour standards. The **UNDP** shall not support activities that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.

- 3.8. The **UNDP** shall have full financial responsibility towards the **EIB** for the **Contribution**. Without prejudice to Articles 12 to 15, the **UNDP** shall, in accordance with its own rules, regulations, policies and procedures (including, for the avoidance of doubt, its oversight framework and internal controls):
- (a) in connection with the use of the **Contribution**, take all reasonable measures to prevent, detect and address fraud, corruption and other possible misconduct or wrongdoing (as these are defined in the **UNDP's** applicable rules, regulations, policies and procedures) that comes about either by act or omission and which has or would have the effect of charging an unjustified item of expenditure to the **Contribution**, so as to ensure that the activities financed wholly or partly by the **Contribution** are effectively carried out and implemented correctly in accordance with the terms of this **Agreement**;
 - (b) ensure that any contract financed, in whole or in part, from the **Contribution** includes the necessary provisions to enable the **UNDP** to investigate or take appropriate action in case of any alleged or suspected occurrence of any of the practices and behaviours referred to in the preceding paragraph;
 - (c) inform the **EIB** of any credible allegation with regard to any of the practices and behaviours referred to at letter (a) of this Article 3.8 in connection with the **Contribution** or the **Action** and of action taken with respect to such matters, without prejudice to the security, safety, privacy and due process rights of any concerned persons and to the integrity of any investigation as specified in the preceding paragraph;
 - (d) take all reasonable measures in accordance with Article 18 to recover the **Contribution** or the portion thereof which has been lost due to fraud, corruption, and other possible misconduct or wrongdoing (as these are defined in the **UNDP's** applicable rules, regulations, policies and procedures);
 - (e) keep accurate and regular records and accounts of the implementation of the **Action**, ensuring accurate, complete, reliable and timely information with respect to the use of the **Contribution**. Such records shall enable the receipts and expenditure related to the activities financed wholly or partly by the **Contribution** to be easily traced, identified and verified, and shall be kept by the **UNDP** for a period of at least five years following the expiry of this **Agreement** and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim, arising out of or in connection with this **Agreement** or any legal commitment thereunder, has been disposed of. Access to such documents shall be granted by the **UNDP** in accordance with Articles 14 or 15, as applicable.
- 3.9. When administering and utilising the **Contribution**, the **UNDP** shall take appropriate efforts within its rules, regulations, policies and procedures to ensure that the **Contribution** is not used to provide assistance to, or otherwise support, terrorists or criminal organizations or any other natural or legal person, entity or body listed on the *United Nations Ineligibility List* (UNIL) as maintained in the *United Nations Market Place* (UNGMP), as this list may be amended from time to time. Further, the **UNDP** shall promptly report to the **EIB** if a breach of the aforementioned list which comes to **UNDP's** notice. For clarity, and having regard to Article 3.1, second sentence, the **UNDP** shall not undertake any procurement or grant award activities in relation to the implementation of the **Action**.
- 3.10. Without prejudice to the preceding, by entering into this **Agreement**, the **UNDP** acknowledges that:
- (a) the **EIB** is bound to comply with economic or financial sanctions laws, regulations, trade embargoes or other restrictive measures enacted, administered, implemented or enforced from time to time by a competent authority, in particular the European Union and any agency or person which is duly appointed, empowered or authorised by the European Union to enact, administer, implement and/or enforce such measures. This means, among others, that the **EIB** is or may be prohibited from making funds and/or economic resources available, directly or indirectly, to or for the benefit of, a sanctioned person (without prejudice to the exceptions contained in any legal acts of the competent European Union institutions enacting said restrictive measures); and that

- (b) the **EIB** is under an obligation not to make funds and/or economic resources available, directly or indirectly, to an entity, whether natural or legal person of any formal or informal grouping thereof, which finds itself in certain circumstances, or has engaged in certain prohibited conduct as defined in its internal rules, regulations, policies and procedures.
- 3.11. The **UNDP** shall cooperate with the **EIB** and the **Promoter** in ensuring that no third parties – whether entities, individuals or group of individuals – that receive, directly or indirectly, through the implementation of the **Action**, funds and/or economic resources attributable to the **Contribution**, fall in any of the circumstances specified in Article 3.10. For clarity, the **UNDP** shall not be responsible for the selection of such third parties.

For the purpose of this Article 3.11, the **UNDP** agrees:

- (a) not to provide any support under the **Action** to any **Beneficiary** unless and until (i) such **Beneficiary** has entered into a *Loan Fund Transfer Agreement* with the **Promoter** and the Ministry of Finance of Ukraine pursuant to the **Finance Contract** and only if such *Loan Fund Transfer Agreement* is valid and in force at any time the support is provided; or (ii) the **UNDP** has received a written notification from the **Promoter** (in a form to be agreed between the **EIB** and the **Promoter** and communicated to the **UNDP**) that a **Beneficiary** may receive support under the **Action** in the absence of a signed *Loan Fund Transfer Agreement*;
 - (b) to cease, in whole or in part, the provision of support under the **Action** to one or more **Beneficiaries** immediately after receiving a written request in this respect from either the **Promoter** or the **EIB**;
 - (c) immediately after receiving a written notification from the **EIB** that a person to whom the **UNDP** has assigned any role in the implementation of the **Action** raises concerns under the **EIB's** legal and regulatory framework (including its rules, regulations, policies and procedures), as reflected in Article 3.10, to remove such person from any activities, including decision-making, in relation to the **Action**.
- 3.12. Any costs incurred in providing support under the **Action** in breach of the terms set out in Articles 3.9 and 3.11 shall not be eligible and shall not be charged to either the **Contribution** or the **EIB**.

ARTICLE 4 – Reports

- 4.1. The **UNDP** shall keep the **EIB** adequately apprised of progress in implementing the **Action**. To this end, the **UNDP** shall provide the **EIB**, during the **Performance Period**, with monthly operational reports, annual financial reports, a final operational report and a final financial report. The specific form and content of the operational and financial reports shall be agreed between the Parties within two months from the date of entry into force of this **Agreement**, subject to the subsequent provisions of this Article 4.
- 4.2. The operational reports shall include:
- (a) a description of the progress achieved during the reporting period in the implementation of the entire **Action**, regardless of which part is financed from the **Contribution**, including observations on the degree of achievement of the expected results as measured by the corresponding performance indicators specified in Annex A, and whether that **Action** has had any unforeseen positive or negative results;
 - (b) a description of any visibility and communication measures undertaken, in line with Article 8;
 - (c) an account of any changes introduced in the implementation of the **Action**, difficulties encountered and measures taken to overcome them;
 - (d) except for the final report, an indicative planning of the activities for the next operational reporting period.

- 4.3. In addition to the elements specified in Article 4.2, the operational section of the final report shall include:
- (a) an assessment of the level of achievement of all the expected results of the **Action**, on the basis of the corresponding current value of any performance indicators specified in Annex A and all the related activities implemented during the entire **Performance Period**;
 - (b) lessons learned;
 - (c) a list of all materials, such as training materials, manuals, studies, leaflets and other information materials, produced in the implementation of the **Action** (and number of copies distributed for each), and description of how the items produced were distributed and to which categories of recipients. Further, a copy of each such item, in either electronic or paper form, shall be provided to the **EIB** at the latest together with the final report.
 - (d) a description of the impact of the capacity building and monitoring support provided.
 - (e) a summary of controls carried out and available audit reports, in line with the **UNDP** policy on disclosure of such controls. Where such controls or audits identify errors or weaknesses in the systems of the **UNDP**, an analysis of their nature and extent and a description of the measures taken to mitigate them shall also be included.
- 4.4. In connection with Article 4.3(e), the **UNDP** shall make available to the **EIB** any internal audit reports issued by the **UNDP's Office of Audit and Investigations** which concern the **Action**, and agrees to provide further clarification in response to any queries arising from such disclosure. Further, if the **EIB** identifies a need for a specific internal audit of the **Action**, the **EIB** – through its *Internal Audit Department* - shall bring such request to the attention of **UNDP's Office of Audit and Investigations** with a view to agreeing on a mutually acceptable way forward, which may include, in accordance with the **UNDP's** accountability and oversight framework, an intervention by the **UNDP's Office of Audit and Investigations**, or, where considered appropriate by **UNDP's Office of Audit and Investigations**, the commissioning by it of an external auditor to intervene on its behalf and under its supervision.
- 4.5. The financial reports, including the final financial report, shall consist of a breakdown, addressing the items set out in Part II of Annex A, of eligible costs (determined in accordance with Article 5) incurred during the reporting period. They shall be accompanied by the timesheets of the **UNDP** personnel assigned to the implementation of the **Action**, reflecting the time spent in delivering the advisory support thereunder. The Parties acknowledge and agree, however, that the **UNDP** shall not provide to the **EIB** any original or copy of a transactional document (such as contracts, invoices, tickets, etc.) as part of the reports. The financial reports (except the final one) shall also include forecasts for payments from the **Contribution** that the **UNDP** expects to become due over the subsequent reporting period. The **UNDP** may provide the **EIB** at any time with updated forecasts (as described in the preceding, and covering the same period) if it deems necessary in the event of substantial changes to these forecasts.
- 4.6. Annually, together with the submission of the financial report, the **UNDP** shall also provide a management declaration, substantially in the form included in Annex B.2. Further, the final financial report shall be certified by the Financial Comptroller of the **UNDP**.
- 4.7. The **UNDP** shall submit the operational and financial reports to the **EIB** according to the following schedule:
- (a) operational reports shall be prepared on a monthly basis, and shall be transmitted to the **EIB** within 15 calendar days from the end of the relevant calendar month;
 - (b) each annual financial report shall cover a calendar year (or less, if applicable, in the case of the first such financial report), and shall be transmitted to the **EIB** within 90 calendar days from the end of the relevant calendar year;
 - (c) a final operational report and a final financial report, covering the entirety of the **Performance Period**, no later than 180 calendar days after the end of the **Performance Period**. If this **Agreement** is terminated before its scheduled expiration date, the **UNDP** shall submit a final operational report and a final financial report no later than 180 calendar days from the termination date.

- 4.8. The reports shall be provided in English. Items produced under the **Action** that are annexed to a report may be provided in the language in which they were produced, accompanied by a translation into English, unless differently agreed between the Parties.
- 4.9. The currency of the reports shall be Euro. Data may be drawn from financial statements denominated in other currencies in accordance with the accounting rules and standards of the **UNDP**. In such case, and for the purpose of reporting and determining the final amount of the **Contribution**, conversion into Euro shall be made using the methodology referred to in the **UNDP**'s applicable rules, regulations, policies and procedures with respect to determining the exchange rate for conversion.
- 4.10. If the **UNDP** is unable to present a progress or final report, together with the accompanying documents (as specified in Articles 4.3, 4.4, 4.5 and 4.7) where applicable, by the deadline set out in Article 4.6, the **UNDP** shall inform the **EIB** in writing of the reasons. The **UNDP** shall also provide a brief summary of the state of progress of the **Action** and, where applicable, a provisional work plan for the next period. If the **UNDP** fails to comply with this obligation for two months, following the deadline set out in Article 4.6, the **EIB** may terminate the **Agreement** in accordance with Article 17, refuse to pay any outstanding amount of the **Contribution** and recover any amount unsubstantiated in accordance with this **Agreement**.
- 4.11. The **UNDP** shall provide the **EIB** with any such additional information in relation to the aforementioned progress reports as the **EIB** may reasonably request, including as a result of a request made to the **EIB** by the **EBRD** or by any **Contributor** under the **Mandate**. Such additional information shall be provided by the **UNDP** within 30 calendar days of receiving a request in this regard from the **EIB** or within the deadline specified by the **EBRD** or by the **Contributor** in their request. The **UNDP** may make a reasoned request to extend this deadline, and the **EIB** shall not withhold unreasonably its consent to such request.
- 4.12. The **EIB** shall communicate to the **UNDP** its reaction on the reports submitted and, if applicable, any requests for additional information pursuant to Article 4.11, within 15 calendar days after the submission of the relevant report by the **UNDP**.

ARTICLE 5 – Financing of the Action – Amount of the Contribution

- 5.1. The estimated budget for the financing of the **Action**, broken down by budget category, is set out in Part II of Annex A.
- 5.2. The maximum amount of the **Contribution** to be made available under this **Agreement** is of EUR 2,000,000 (*two million euros*). The final amount of the **Contribution** shall be determined on the basis of the final operational and financial reports submitted by the **UNDP** pursuant to Article 4.
- 5.3. The cost of the **Action** considered for determining the final amount of the **Contribution** in accordance with Article 5.2 shall be the aggregate amount of the direct personnel costs incurred by the **UNDP** which comply with the eligibility criteria set in Article 5.8 and (ii) the amount of eligible indirect costs, calculated in accordance with Article 5.6(b).
- 5.4. Where the **Action** is not implemented, is not implemented in line with the **Agreement** or is implemented partially or late, the **EIB** may, after allowing the **UNDP** to submit its observations, reduce the **Contribution** in proportion to the seriousness of the above mentioned situations. If there is a disagreement between the **UNDP** and the **EIB** on the reduction, Article 22 shall apply.
- 5.5. The **Contribution** is provided exclusively towards the eligible costs of the **Action**, reflected in Part II of Annex A. The criteria and conditions for determining whether a cost is eligible are set out in Articles 5.6 to 5.9. The **UNDP** shall ensure that no double funding of the eligible costs occurs.

- 5.6. The costs that may be declared as eligible are:
- (a) the direct costs incurred by the **UNDP** in the implementation of the **Action** that can be directly traced to the activities and deliverables set forth in Annex A; meaning the costs of the **UNDP** personnel assigned to the implementation of the **Action**. Such costs shall be declared on the basis of the fee rates set out in the budget included in Part II of Annex A, established by the **UNDP** on the basis of its historical or actual accounting data on cost of personnel, its usual accounting practices, its expert judgment or statistical or other objective information where available and appropriate, provided that it avoids double funding of costs and it does not include costs that are ineligible in accordance with Article 5.9; and
 - (b) indirect costs, amounting to 44% of of the final aggregate amount of the direct eligible costs declared by the **UNDP** and accepted as eligible by the **EIB**. Such indirect costs cover costs incurred by the **UNDP** in support of implementing the **Action** but which cannot be traced unequivocally to the activities and deliverables described in Annex A (such as costs of horizontal and support staff, office and equipment costs, ensuring availability and maintenance of vehicles, travel, security, and contingencies, as well as corporate management costs equivalent to 7% of direct eligible costs); and which are not included in any category of direct eligible costs in the budget of the **Action** provided in Part II of Annex A. For clarity, the indirect costs do not need to be backed by specific accounting documents.
- 5.7. In order to be eligible to be met from the **Contribution**, direct costs incurred by the **UNDP** in the implementation of the **Action** must meet the following cumulative criteria:
- (i) are necessary for implementing the **Action**, directly attributable to it, arising as a direct consequence of its implementation and charged in proportion to actual use;
 - (ii) represent real expenditure, definitely and genuinely borne by the **UNDP**;
 - (iii) are incurred by the **UNDP** during the **Performance Period** and in compliance with the terms of this **Agreement**;
 - (iv) are reasonable and justified;
 - (v) comply with the principles of sound financial management;
 - (vi) are in line with the usual practices of the **UNDP**, regardless of their source of funding;
 - (vii) are identifiable, determined and recorded in accordance with the accounting practices of the **UNDP**;
 - (viii) comply with the applicable tax and social legislation, taking due account, if applicable, of any privileges and immunities that the **UNDP** may enjoy pursuant to its constituent documents, international convention or any applicable law;
 - (ix) correspond to one of the categories of direct costs eligible for payment from the **Contribution**, and entered as eligible cost in the budget of the **Action** included in Part II of Annex A.
- 5.8. The internal accounting procedures used by the **UNDP** for the implementation of the **Action** must permit direct reconciliation of the direct costs and, if applicable, revenue declared in respect of the activities for which the **Contribution** is provided with the corresponding accounting statements and records. The accounts kept by the **UNDP** for the implementation of the **Action** must enable receipts and expenditure relating to that **Action** to be easily traced, identified and verified.
- 5.9. In addition to any costs not fulfilling the conditions of eligibility set out above, the following costs are not eligible for financing from the **Contribution**:
- (i) bonuses, provisions, reserves or discretionary remuneration-related costs. Employers' contributions to pension or other insurance funds run by the **UNDP** may only be eligible to the extent they do not exceed the actual payments made by these schemes and that the amount provisioned does not exceed the contribution that could have been made to an external fund;

- (ii) full-purchase cost of equipment and assets, unless the asset or equipment is specifically purchased for the **Action** and ownership is transferred in accordance with Article 7;
- (iii) duties, taxes, and charges, including VAT, custom duties or similar other fees or charges payable in the territory of Ukraine or elsewhere;
- (iv) return on capital;
- (v) debt and debt service charges;
- (vi) provision for losses, debts, or potential future liabilities;
- (vii) bank charges for transfers from and to the **EIB**;
- (viii) exchange rate losses;
- (ix) any applicable bank charges or costs relating to the maintenance and administration of any bank account opened by the **UNDP** for the purpose of receiving and managing the **Contribution**;
- (x) any costs incurred during the suspension, in whole or in part, of this **Agreement** or the **Action**, except the minimum costs referred to in Article 17;
- (xi) costs (or parts thereof) declared by the **UNDP** under another agreement and covered thereunder;
- (xii) contributions in kind. The cost of staff assigned to the **Action** and actually incurred by the **UNDP** is not a contribution in kind and may be declared as a direct eligible cost if it complies with the conditions set out in this Article 5;
- (xiii) costs of purchase of land or buildings.

ARTICLE 6 – Disbursement of the Contribution

Disbursement schedule

- 6.1. Provided that this **Agreement** has been executed and is in full force and effect, the **EIB** shall provide a first pre-financing instalment in amount of EUR 400.000 (*four hundred thousand euros*), representing 20% of the **Contribution**, within 30 calendar days of receiving a request for disbursement from the **UNDP** (substantially in the form included in Annex B.1), into the EUR-denominated bank account indicated by the **UNDP** in the request for disbursement submitted.
- 6.2. The **UNDP** may submit subsequent requests for further pre-financing instalments, up to the maximum amount specified in Article 5.2 in aggregate, provided that the following conditions are met:
- (a) the amount requested for disbursement corresponds to maximum 100% of the forecast for payments that the **UNDP** expects to become due under the **Action** for the subsequent 12 months of implementation of the **Action**, as specified in the last such forecast provided by the **UNDP** in accordance with Article 4.4;
 - (b) all operational and financial reporting obligations of the **UNDP** in respect of the **Action** for the entire period preceding the request for disbursement (including the corresponding management declarations) have been duly fulfilled in accordance with Article 4; and
 - (c) except in duly justified cases, the **UNDP** shall request such subsequent instalments of pre-financing only if, at the date of the request, at least 70% of the previous disbursement and 100% of all preceding disbursements, if any, made by the **EIB** has been used by the **UNDP** to cover the costs of the **Action**, as evidenced through the last operational and financial reports submitted by the **UNDP** in accordance with Article 4.
- 6.3. The disbursements of the **Contribution** referred to in Article 6.2 if any, shall be made by the **EIB** in EUR within 60 calendar days of receiving from the **UNDP** a request for disbursement (except if Article 6.4 or 6.11 applies), into the EUR-denominated bank account indicated by the **UNDP** in the request for disbursement submitted.

- 6.4. The **EIB** may suspend the deadline for disbursement specified in Articles 6.1 or 6.3 by promptly notifying the **UNDP** if, at the time the **EIB** receives the request for disbursement from the **UNDP**:
- (a) an amount in respect of and equal to the disbursement requested has not been received by, or is not available to, the **EIB** under the **Mandate** pursuant to the **Financing Documentation**; or
 - (b) if applicable, the disbursement cannot be approved because the conditions specified in Article 6.2 are not met; or
 - (c) credible information has come to the notice of the **EIB** casting doubt about the eligibility of costs declared in the financial report and additional reviews, or investigations carried out by either Party in accordance with the applicable provisions of Article 12, are necessary.

The deadline shall start to run again from the date when the **EIB** has available the necessary funds under the **Mandate** (of which it shall inform the **UNDP** as soon as practicable), from the date when all the conditions for the acceptability of the disbursement request are complied with, or, respectively, from the date when the eligibility of costs has been clarified. Notwithstanding any such suspension, the Parties may agree to partial disbursement prior to **EIB** making a decision on the eligibility of any amounts as referred to at letter (c) above.

- 6.5. Disbursements by the **EIB** are considered to have been carried out on the date when they are debited from its account. When making disbursements, the **EIB** shall formally notify to the **UNDP** the amount due, specifying to which disbursement request it responds. In case of reduction of the **Contribution** or recovery of undue amounts, the notification shall be preceded by the consultation procedure set out in this Article 6.

Final Amount of the Contribution and Consultation Procedure

- 6.6. At the end of the **Performance Period** the **EIB** shall determine the final amount of the **Contribution** in accordance with Article 5, and notify the **UNDP** thereof. If the aggregate amount of payments made is greater than said final amount of the **Contribution**, the **EIB** shall proceed to recover the difference.
- 6.7. In this context, the **EIB** acknowledges the mandated primacy of the **UNDP's** control systems, and that the **UNDP's** rules, regulations, policies and procedures give the **UNDP's Office of Audit and Investigations** the exclusive right to audit the accounts and statements of the **UNDP**, and allow only **UNDP's Office of Audit and Investigations** to request the external auditors of the **UNDP** to conduct specific audits.

As such, the **Contribution** (including the financial transactions and financial statements concerning the activities financed or co-financed by the **Contribution**) and the **Action** shall be subject to the **UNDP's** established procedures for internal and external audit under appropriate provisions of the **UNDP's** applicable financial regulations, rules and directives.

- 6.8. A copy of the overall audited financial statements of the **UNDP** shall be submitted to the **EIB** when and as issued. Further, should the *UN Board of Auditors* bring to the attention of the *UN General Assembly* or the *UN Advisory Committee on Administrative and Budgetary Questions* any findings pertaining to the **Action** or the **Contribution**, such information shall be promptly notified to the **EIB** by the **UNDP**.
- 6.9. The **EIB** shall endeavour to build reliance on the systems of the **UNDP** and to make full use of cross-reliance on audits conducted within the **UNDP** and to reduce its own control efforts where the aforementioned systems provide adequate assurance.
- 6.10. Notwithstanding the **EIB's** reliance on the **UNDP's** rules, regulations, policies and procedures in respect of audit, in the event that a **Party** becomes aware of any factors that would indicate a need for closer scrutiny of the **Action** and/or the costs under the **Action** that are financed in whole or in part by the **Contribution**, the Parties agree to the consultation procedure described in Articles 6.11 to 6.12 below.
- 6.11. If the **EIB** considers as ineligible costs reported by the **UNDP** at the time of an annual financial report or of the final financial report, or if Article 6.6, second sentence, otherwise applies, the **EIB** shall (i) formally notify the **UNDP** of its intention to reject such costs or, as applicable to recover, the amount concerned and the reasons why, and (ii) invite the **UNDP** to submit its observations

within 30 calendar days of receiving the notification, and to consult with the **EIB** on the matter. If the **UNDP** does not submit any observations within the specified deadline or, following consultations between the Parties, the **EIB** decides to pursue the rejection or, as applicable, the recovery despite the observations it has received, it shall confirm the rejection or, as applicable, the recovery (if applicable, together with the notification of any amounts due) and formally notify to the **UNDP** a debit note for the amount to be recovered, specifying the terms and the date for payment.

Without prejudice to the right of either Party to invoke the dispute settlement procedure under Article 22, if the **UNDP** does not repay the **EIB** by the date indicated the debit note, the **EIB** shall recover the amount set out in the debit note from the **UNDP**, including by taking legal action.

- 6.12. The **EIB** may (at the termination of the **Agreement**, upon determining the final amount of the **Contribution**, or afterwards) reduce the amount of the **Contribution**, proportionate to the seriousness of the breach, if the **UNDP** has (i) committed any substantial errors or other administrative or financial mismanagement or has engaged in any unlawful or improper activity in connection with the activities financed, in whole or in part, by the **Contribution** or with any other transaction contemplated by this **Agreement** or (ii) has committed a serious breach of obligations under this **Agreement** (including improper implementation of the **Action**, submission of false information, failure to provide required information, breach of ethical principles).

Before proceeding to the reduction of the **Contribution**, the **EIB** shall formally notify the **UNDP** of its intention to reduce the **Contribution**, the amount it intends to reduce and the reasons why, and invite the **UNDP** to submit its observations within 30 calendar days of receiving the notification. If the **EIB** does not receive any observations or decides to pursue the reduction despite the observations it has received, it shall formally notify the **UNDP**, confirming the reduction (if applicable, together with the notification of amounts due). The procedure described in Article 6.11 shall apply accordingly.

- 6.13. No disbursement made by the **EIB** pursuant to this Article 6 implies recognition of the regularity, or of the authenticity, completeness and correctness of the documents and information provided by the **UNDP** in support of the costs declared.

ARTICLE 7 – Ownership and Use of Results and Intellectual Property Rights

- 7.1. Subject to any pre-existing **Intellectual Property Rights** of any individual or legal entity, including either of the Parties, which shall remain with the original owner, the results of the **Action** (including any the **Intellectual Property Rights** in new materials compiled or prepared in the implementation of that **Action**, including all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material), shall vest jointly in the Parties.
- 7.2. Pursuant to the **Financing Documentation**, the **EIB** shall be entitled to all **Intellectual Property Rights** in the products, processes, inventions, ideas, know-how, or documents and other materials which the **UNDP** develops under the **Agreement** and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the **Agreement**. Nonetheless, the **EIB** shall grant the **UNDP** a perpetual, royalty-free license to reproduce, adapt, modify, distribute, and/or sub-license such **Intellectual Property Rights** for non-commercial purposes.
- 7.3. To the extent that the **Action** (as described in Annex A) includes the purchase, with the **Contribution**, of any equipment, vehicles or other assets, such equipment, vehicles or other assets shall be transferred, at the latest at the end of the **Performance Period**, to the public final beneficiaries of that **Action** that were identified for this purpose in Annex A. The documentary proof of such transfers need not be presented with the final report (though it shall be referred to therein), but shall be kept for the duration and along with the documents and records mentioned in Article 3.8 (e).

In connection with this, and having regard to Article 3.1, second sentence, the Parties agree that no such purchases are envisaged to be carried out under the **Action**.

ARTICLE 8 – Communication and visibility

- 8.1. With due consideration to the **UNDP's** applicable rules, regulations, policies and procedures, the **UNDP** shall take appropriate measures to publicise the fact that the **Action** has received funding under the **Mandate**. Information given to the press, to the public, or any third party, and all related publicity material, official notices, reports and publications produced in the implementation of that **Action** must acknowledge that the **Action** is carried out "*with funding from the Eastern Europe Energy Efficiency and Environment Partnership (E5P) Fund*" and shall also make express reference to the individual **Contributors**, including the **Union**. Any materials produced with the **Contribution** under the **Action** shall display in an appropriate way the visibility elements of the **Mandate** as these shall be provided by the **EIB** from time to time.
- 8.2. Where the display of the **Mandate** or **EIB** visibility elements may jeopardise the **UNDP's** privileges and immunities or the safety of the **UNDP's** personnel or of the **Beneficiaries**, the **UNDP** shall propose appropriate alternative arrangements.
- 8.3. A Party must obtain prior written agreement from the other Party on any use it intends to make of the other Party's logo or other visibility elements. The use of the **EIB** visibility elements (including the **EIB** logo) by the **UNDP** shall not create any confusion regarding the identification of the **Action** as an activity of the **UNDP**, or, when applicable, the ownership of the equipment, vehicles or assets by the **UNDP**.
- 8.4. Publications pertaining to the **Action**, such as reports prepared by the **UNDP**, publications with an ISBN, newsletters and similar, in whatever form and by whatever medium, including the internet, shall carry the following acknowledgment: "*This document has been produced with the financial assistance of the Eastern Europe Energy Efficiency and Environment Partnership (E5P) Fund, to which the European Union is the largest contributor. The views expressed herein are those of (name of author) and can therefore in no way be taken to reflect the official opinion of the EBRD, the EIB, the E5P Fund or of any contributor thereof*".
- 8.5. The **UNDP** shall include in its regular reports to the **EIB** submitted in accordance with Article 4 information on measures implemented to ensure the visibility of the support under the **Mandate**, including the links to any websites where it has published information on the **Action**, and shall communicate to the **EIB** any other progress and situation reports, publications, press releases and updates relevant to this **Agreement**, as and when they are issued.
- 8.6. The **UNDP** shall ensure that any third party with which the **UNDP** enters into a legal commitment for or in the implementation of the **Action** also complies, as appropriate, with the obligations incumbent on the **UNDP** pursuant to this Article 8, notably in relation to ensuring the visibility of the financing source of the activities performed.
- 8.7. Each Party agrees to extend an invitation to the other Party to participate in major publicity events that it may organise in relation to the **Action** during its execution. Such events may include any regular or technical working meetings between the Parties in the context of that **Action**.
- 8.8. At the request of the **EIB**, the **UNDP** agrees to cooperate with the **EIB** in any communication activities that the **EIB** may undertake in the framework of the **Mandate**, such as conferences or other events.
- 8.9. Subject to the applicable rules on confidentiality, security and protection of personal data, the **UNDP** authorises the **EIB** to publish, on an annual basis, the following information in relation to this **Agreement**: the title, nature and purpose of the **Action**, the name and address of the **UNDP**, and the maximum amount of the **Contribution**. Upon a duly substantiated request by the **UNDP**, and if the disclosure of the above information would risk threatening the **UNDP's** safety or harming its legitimate interests, the **EIB** may agree to forego such publicity.
- 8.10. Without prejudice to the preceding paragraph, the **UNDP** acknowledges that the **EIB** may use information and data in respect of the **Action**, including that provided by the **UNDP** through the reports submitted pursuant to Article 4, in communication and publicity materials the **EIB** may prepare in the framework of the **Mandate**.
- 8.11. The Parties shall consult immediately and endeavour to remedy any detected shortcomings in implementing the visibility requirements set out in this Article 8. This is without prejudice to measures the **EIB** may take in case of substantial breach of an obligation.

ARTICLE 9 – Confidentiality

- 9.1. The Parties shall, in accordance with their respective rules, regulations, policies and procedures, keep any **Confidential Information** under their effective control and using the same standard of care they use to keep their own confidential information confidential. The **Receiving Party** must not use or reproduce any document containing, or referring to, any **Confidential Information**, nor allow any other person to use or reproduce any such document, except to the extent necessary to enable it to exercise its rights or perform its obligations in accordance with the terms and conditions of this **Agreement**, or with the prior agreement in writing of the **Disclosing Party**.

For the avoidance of doubt, the **Receiving Party** may – without being considered in breach of this Article 9 – disclose **Confidential Information** to its employees, officers, directors, internal or external auditors, internal accountants, and/or members of their respective governing, supervisory, advisory and/or auditing bodies (which, for clarity, in the case of the **UNDP** shall include the *United Nations Secretary General*, the *United Nations Secretariat* and the *United Nations General Assembly*), provided that such individuals strictly require access to the **Confidential Information** for the performance of their duties.

- 9.2. By exception from the first paragraph of Article 9.1, the **Receiving Party** may disclose **Confidential Information** without the agreement of the **Disclosing Party** where:

- (a) disclosure of or access to **Confidential Information** is authorised or required by law, or by any rules or regulations issued by any competent authority, which are applicable to the **Receiving Party**; or
- (b) **Confidential Information** is disclosed by the **Receiving Party** in order to protect its interests in the course of any legal or arbitration proceedings to which it is a party;
- (c) **Confidential Information** is disclosed by the **EIB** (as **Receiving Party**) to the donors pursuant to the relevant **Financing Documentation**, it being understood that such recipients have, under the terms of the **Financing Documentation**, an obligation to maintain confidentiality of such information;

provided that, prior to such disclosure, the **Receiving Party** (i) notifies the receiving third party that the **Confidential Information** disclosed is confidential, and ensures, through appropriate means (including, as necessary, through incorporating terms in the relevant contractual commitments), that the receiving third party is bound by standards of confidentiality no less stringent than those applicable to the **Receiving Party** under this **Agreement**; and (ii) gives written notice to the **Disclosing Party** immediately upon becoming aware of the requirement to disclose **Confidential Information**, and the **Disclosing Party** is entitled to argue against disclosure.

- 9.3. The obligations of confidentiality and restrictions on use contained herein shall not apply to any part of the **Confidential Information** which the **Receiving Party** is able to demonstrate:

- (a) was lawfully in its possession and known to it prior to its disclosure by the **Disclosing Party**, as evidenced by documents antedating the date of disclosure; or
- (b) was in the public domain or the subject of public knowledge at the time of disclosure by the **Disclosing Party**; or
- (c) becomes part of the public domain or the subject of public knowledge through no fault of the **Receiving Party**; or
- (d) becomes available to the **Receiving Party** from a third party which, to the knowledge of the **Receiving Party**, is not in breach of a legal obligation of confidentiality to the **Disclosing Party**.

ARTICLE 10 – Conflict of interest

- 10.1. The **UNDP** shall take all necessary measures, in accordance with its applicable rules, regulations, policies and procedures, to avoid, eliminate, or adequately address any facts or circumstances that could give rise to a conflict of interest in the execution of this **Agreement**. There is a conflict of interest where the impartial and objective exercise of the functions of any person implementing the **Action** is compromised.
- 10.2. The **UNDP** shall inform the **EIB** promptly of any conflict of interest that arises during the implementation of the **Action**, and of any measures taken to resolve the situation. If the **EIB** deems necessary, it may request the **UNDP** to adopt additional measures, to be agreed between the Parties.
- 10.3. The **UNDP** shall ensure that the obligations set out in Article 10.1. apply as appropriate to any third party with which the **UNDP** enters into a legal commitment for or in the implementation of the **Action**.

ARTICLE 11 – Protection of Personal Data

- 11.1. The **UNDP** shall ensure appropriate protection of personal data, in accordance with its rules, regulations, policies and procedures. Such procedures are understood to ensure that any operation involving the processing of personal data, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure, erasure or destruction, is processed with respect for the following principles:
 - (a) personal data is processed lawfully, fairly and in a transparent manner in relation to the data subject;
 - (b) personal data is collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
 - (c) personal data processed is adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
 - (d) personal data is accurate and, where necessary, kept up to date;
 - (e) personal data is kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; and
 - (f) personal data is processed in a manner that ensures appropriate security of the personal data.
- 11.2. The **UNDP** shall require any third party with which the **UNDP** enters into a legal commitment for or in the implementation of the **Action** to comply, as applicable, with the afore-mentioned principles for processing personal data.

ARTICLE 12 – Cooperation for managing complaints and for investigations

Cooperation for managing complaints

- 12.1. The **EIB**, due to its nature as a **Union** body, has specific institutional obligations and applicable policies and procedures when responding to complaints not falling within the scope of prohibited conduct, that is in relation to maladministration as defined by the *EIB Group Complaints Mechanism Policy*¹ and by the mandate of the *European Ombudsman*.

For the **UNDP**, the term "complaint" as used in this section "*Cooperation for managing complaints*" of this Article 12 shall include (but not be limited to) procurement protests and other matters not related to fraud, corruption and other misconduct or wrongdoing (as defined in the applicable policies of the **UNDP**) that may warrant a mechanism or process for independent review.

¹ Available on **EIB**'s website

- 12.2. When complaints under its *EIB Group Complaints Mechanism Policy* are lodged with the **EIB**, they are handled within the Complaints Mechanism Division within the Inspectorate General, or – when such complaints concern procurement carried out in the implementation of investment projects financed by the **EIB**, by a Procurement Complaints Committee in accordance with section 1.8 and Annex 8 of the **EIB's Guide to Procurement for Projects Financed by the EIB**.

Within the **UNDP**, the **UNDP's Office of Audit and Investigations** is responsible for receiving and responding to non-procurement protests related complaints as referred to in Article 12.1 second paragraph.

- 12.3. In relation to complaints lodged with either Party in connection with the **Action** or this **Agreement**, the Parties agree to:
- (a) use their own respective rules, regulations, policies and procedures in handling and responding to these complaints (including, in the case of the **EIB**, in compliance with the confidentiality and personal data protection obligations it has under applicable Union law); and
 - (b) cooperate by written and oral exchanges as well as on mutually agreed actions on any matter related to these complaints, taking into account the need to (i) minimise any potential disruptions to, and avoid creating an undue burden on, each Party's regular operations, (ii) avoid jeopardizing the conduct of any investigation, and (iii) respect the safety, security, privacy and due process rights of concerned individuals.
- 12.4. The Parties further agree that complaints lodged with either Party against the personnel or members of the governing, supervisory, advisory or auditing bodies of a Party shall be handled exclusively by the Party to which the concerned individual is contractually linked. In the event that the other Party is directly affected by the conduct which is the subject of a complaint, the Party to whom the individual is contractually linked shall, within the framework of its applicable rules, regulations, policies and procedures and taking into account the considerations set forth in Article 12.3(b) above such as respecting the security, safety, privacy and due process rights of any concerned persons and the integrity of any investigation, keep the other Party apprised of the outcome of its assessment or investigation in a timely manner and on a strictly confidential basis.
- 12.5. In addition, the **UNDP** shall, in accordance with its applicable rules, regulations, policies and procedures, inform the **EIB** of any credible complaints it receives in connection with the **Action** or this **Agreement** and of action taken. Upon request, the **UNDP** shall, within the framework of its applicable rules, regulations, policies and procedures and taking into account the considerations set forth in Article 12.3(b) such as respecting the security, safety, privacy and due process rights of any concerned persons and the integrity of any investigation, also communicate to the **EIB** any available relevant information related to the complaint.

Cooperation in respect of Investigations

- 12.6. Within the **EIB**, the *Investigations Division* within the *Inspectorate General* is responsible for receiving allegations of prohibited conduct (as defined in the *EIB Group Anti-Fraud Policy*²), and for responding to such allegations in accordance with **EIB's** applicable rules, regulations, policies and procedures.

Within the **UNDP**, the *Office of Audit and Investigations* is responsible for receiving and responding to allegations of fraud, corruption and other possible misconduct or wrongdoing (including abuse of privileges and immunities; sexual exploitation and abuse; sexual harassment; workplace harassment and abuse of authority; retaliation against whistle-blowers), as these are defined in, and in accordance with, the **UNDP's** relevant rules, regulations, policies and procedures.

For the avoidance of doubt, either Party may receive information about such issues directly from internal or third party sources or through their own enquiries.

² Available on **EIB's** website

12.7. For the avoidance of doubt:

- (a) all allegations of prohibited conduct (as defined in the *EIB Group Anti-Fraud Policy*) by the **EIB**'s staff or members of its governing, supervisory, advisory or auditing bodies shall be assessed and, if appropriate and where deemed credible, investigated and addressed solely by the **EIB** in accordance with its applicable rules, regulations, policies and procedures; and
- (b) all allegations of fraud, corruption and other possible misconduct and/or wrongdoings (as defined in the **UNDP**'s relevant rules, regulations, policies and procedures) by the **UNDP**'s personnel members of its governing, supervisory, advisory or auditing bodies, shall be assessed and, if appropriate and where deemed credible, investigated and addressed solely by the **UNDP** in accordance with its applicable rules, regulations, policies and procedures.

12.8. For the purposes of Article 12.7, if a Party receives any such allegations or information as specified at letters (a) or (b) of Article 12.7 concerning the personnel or members of the governing, supervisory, advisory or auditing bodies of the other Party, it shall refer the same to the other Party, to the extent consistent with the referring Party's rules, regulations, policies and procedures and without prejudice to the security, safety, privacy and due process rights of any concerned persons and to the integrity of any investigation.

12.9. To the extent that an investigation carried out by a Party confirms that conduct as specified in Article 12.7 (a) or, respectively, (b) has occurred, that Party shall, in accordance with its accountability and oversight framework and its applicable rules, regulations, policies and procedures:

- (a) take timely and appropriate action in response to the findings of such an investigation, and
- (b) without prejudice to the security, safety, privacy and due process rights of any concerned persons and to the integrity of any investigation, inform in a timely manner the other Party of the outcome of its investigation and of any remedial and/or disciplinary and/or administrative measures taken, including where relevant details of any recovered amounts. The relevant provisions of Articles 6 and 18 shall apply *mutatis mutandis* to the recovery of such amounts by the **EIB**.

Unless otherwise agreed in writing between the Parties, the exchanges of information specified in Article 12.9(b) shall be carried out through the organizational units specified in Article 12.6, which shall subsequently make all reasonable efforts - taking due account of the need to (i) avoid duplication of work, (ii) minimise disruption to the **Action**, (iii) avoid jeopardizing the conduct of any investigation, (iv) respect the safety, security, privacy and due process rights of concerned individuals, and (v) make the best use of each Party's investigative resources - to agree on a coordinated approach to responding to the allegations concerned, including where appropriate by carrying out parallel investigations in accordance with their respective rules, regulations, policies and procedures, and to promptly exchange information and materials in relation to the assessment and investigation of the allegations concerned.

12.10. The conduct of parallel investigations or other operational activities and the exchange of information may be the subject of direct arrangements between the **EIB** (through its *Investigations Division*) and the **UNDP** (through its *Office of Audit and Investigations*), to the extent consistent with their respective rules, regulations, policies and procedures.

Common provisions

12.11. For the purposes of this Article 12, third parties commissioned by either Party in furtherance of their corresponding activities are to be regarded as part of that Party, and will be subject to the same confidentiality requirements. For the avoidance of doubt, such third parties shall be deemed to not be included in the scope of the provisions of this **Agreement** referring to third parties.

12.12. The **UNDP** acknowledges and accepts that the **EIB** has an obligation, pursuant to the **Financing Documentation**, to report, without delay, to the **EBRD**, for further transmittal to the **Contributors**, all confirmed cases of practices of the types listed below or of any illegal activities related to the **Contribution** and/or the implementation of the **Action**, as well as measures related thereto taken by the **EIB**: Such transmittals shall at all times be considered confidential information and the

transmittals shall respect the security, safety, privacy and due process rights of any concerned persons and the integrity of any investigation:

- (a) a *coercive practice* which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (b) a *collusive practice* which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (c) a *corrupt practice* which means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (d) a *fraudulent practice* which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (e) a *misuse* of the **Contribution** which means improper use of the **Contribution**, committed either intentionally or through reckless disregard;
- (f) an *obstructive practice* which means (a) destroying, falsifying, altering or concealing of evidence material to an **EBRD** investigation, which impedes the **EBRD's** investigation; (b) making false statements to investigators in order to materially impede an **EBRD** investigation into allegations of a prohibited practice; (c) failing to comply with requests to provide information, documents or records in connection with an **EBRD** investigation; (d) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to an **EBRD** investigation or from pursuing the investigation; or (e) materially impeding the exercise of the **EBRD** contractual rights of audit or inspection or access to information; and
- (g) a *theft* which means the misappropriation of property belonging to another party.

12.13. Having regard to Article 9, the information provided by either Party to the other pursuant to this Article 12 shall at all times be deemed to be, and treated as, **Confidential Information**.

ARTICLE 13 – Operational monitoring and evaluation

13.1. The Parties each have independent evaluation functions whose mandate is to analyse the performance of operations in order to ensure accountability and help draw lessons for the continuous improvement of these operations, in line with international best practices.

13.2. Representatives of the **EIB** shall be invited to participate, at the **EIB's** own cost, in the main monitoring missions and in the evaluation missions that may be carried out by the **UNDP** in relation to the implementation of the **Action**. Such missions, including when the **EIB** opts to participate, shall be carried out in accordance with the **UNDP's** applicable rules, regulations, policies and procedures.

Where the **UNDP** decides to carry out an independent evaluation of the **Action**, it shall request and consider comments from the **EIB** on the terms of reference before the evaluation exercise takes place. Furthermore, the **UNDP** shall offer to make the draft evaluation report available to the **EIB** for comments prior to final issuance. In accordance with the rules, regulations, policies and procedures of the **UNDP**, the final version of any evaluation report shall be published on the **UNDP's** website.

13.3. The provisions of Article 13.2 are without prejudice to any evaluation mission that the **EIB** may wish to carry out, in accordance with its own rules, regulations, policies and procedures and at its own cost, in connection with the activities that are the subject of this **Agreement** and the use of the **Contribution** thereunder. Such evaluation missions by the **EIB** representatives should be planned and completed in a collaborative manner between the Parties, with all reasonable efforts being made to minimise any potential disruptions to and avoid creating an undue burden on the **UNDP's** regular operations while ensuring that **EIB's** access to relevant information and interlocutors to conduct its evaluations is not unreasonably restricted or hindered. They shall be

planned ahead and procedural matters, such as timing and scope of the mission, questions the mission wishes to raise with the **UNDP**, and whether missions are to visit the headquarter of the **UNDP** and/or field offices implementing the **Action**, are to be agreed upon by the Parties in advance. The **EIB** shall offer to make the draft evaluation report available to the **UNDP** for comments prior to final issuance.

ARTICLE 14 – Verifications by the EIB

- 14.1. Without prejudice to Articles 6.7 and 6.9, the **UNDP** (i) recognises the need for the **EIB** to report to its donors, as well as to competent Union bodies that the **Contribution** has been used for its intended purpose and according to the principle of sound financial management based on the assurance that an adequate system of accountability is in place; and (ii) acknowledges that the **EIB**, in line with best banking practices, has put in place an internal control framework for the management of all operations under the **Mandate**, including the **Action** and the **Contribution**.
- 14.2. Where, in application of the **EIB**'s internal control framework, the **Action** is included in a sample of transactions subject to inquiry, the **EIB** may undertake verification missions on the **Action**. Such verifications may also focus on expenditures reported in relation to the **Contribution** and other matters in connection therewith.
- 14.3. In relation to Article 14.2, specific focal points should be designated at the **EIB** and the **UNDP** to ensure efficient co-ordination and conduct of all verifications. Further, verification missions should be planned and completed in a collaborative manner between the **UNDP**'s staff and the **EIB** representatives, keeping in mind the commitment of both Parties to the effective and efficient operation of their agreement.
- 14.4. In this respect, the **Parties** agree that in case the **EIB** intends to carry out a verification mission in connection with the **Action** and/or the **Contribution**, such verification missions shall be undertaken on terms and conditions substantially equivalent to those agreed for this purpose between the *European Union*, represented by the European Commission, and the *United Nations* under their *Financial and Administrative Framework Agreement* as in force at the time the verification mission is undertaken, and any related implementation procedures (such as the *Common Understanding on the use of the Terms of Reference for Expenditure Verification for Operations implemented by UN-Organisations that are among the Signatory Parties of the EU-UN-FAFA* and the corresponding *Terms of Reference for Expenditure Verifications*³), or any other agreement and/or document which amends, replaces, supplements or restates these.
- 14.5. Upon receiving a notification from the **EIB** that it intends to carry out a verification mission in connection with the **Action** and/or the **Contribution**, as referred to in Article 14.4, the **UNDP** agrees to make available to the **EIB** a full set of the documents specified in the preceding paragraph, on the basis of which the Parties shall jointly plan and organize the verification mission.

ARTICLE 15 – Verifications by competent Union authorities

- 15.1. The **UNDP** recognises that competent bodies of the **Union**, notably the **Commission**, the European Court of Auditors, **OLAF** and/or **EPPO** may undertake, including on the spot, verifications concerning the activities financed by the **Contribution**, request all relevant financial information (drawn from accounts and records), seek clarifications of information, and verify underlying documents.
- 15.2. The Parties agree that such verifications as referred to in Article 15.1 shall be subject to the relevant provisions of the *Financial and Administrative Framework Agreement* between the *European Union*, represented by the European Commission, and the *United Nations* (or any successor agreement thereto), which are incorporated by reference into this **Agreement**.

³ Available at: [Audit and control | International Partnerships \(europa.eu\)](https://ec.europa.eu/audit/en/international-partnerships)

ARTICLE 16 – Suspension

- 16.1. Any Party may decide to suspend the implementation of all or part of the **Action** if exceptional or unforeseen circumstances beyond the control of that Party, such as in cases of **Force Majeure**, make such implementation, in the reasonable opinion of that Party, impossible or excessively difficult. The Party deciding the suspension shall promptly notify the other Party, providing all the necessary details, including measures taken to minimize any possible damage, and the foreseeable effect and date of resumption.
- 16.2. The **EIB** may be obliged to suspend, in whole or in part, the execution of the **Agreement** if the **EIB** receives a notification from the **Commission** or other competent **Union** authority (including as a result of the adoption of a **Union** decision identifying a violation of human rights or in cases such as crisis entailing a change of **Union** policy) which has as purpose or effect to prohibit or limit the **EIB**'s ability to commence or continue operating in the sector of the **Action** or in Ukraine. The **EIB** shall indicate in its notice the date of suspension and any necessary details. The Parties may enter into discussions as regards practical arrangements during suspension and next steps, which, for the avoidance of doubt, may include an agreement to terminate this **Agreement**.
- 16.3. In the situations listed in Articles 16.1 and 16.2, the Parties shall take all reasonable measures in their respective competences to minimise the duration of the suspension, and resume implementation once conditions allow. In addition, in relation to Article 5.9 (x), the **UNDP** is entitled to the reimbursement of such eligible costs that the **UNDP** incurs during the suspension period which the **UNDP** cannot reasonably suspend, reallocate or terminate on legal grounds, and/or eligible costs incurred under new legal commitments necessary for a possible resumption of the implementation of the **Agreement**. If however the **Financing Documentation** does not recognize such costs as eligible under the **Contribution**, the Parties shall consult each other with a view to agreeing a mutually acceptable solution.
- 16.4. Article 16.3 is without prejudice to the right of the Parties to agree on any amendments to the **Agreement** or the **Action** that are necessary to adapt it to the new circumstances, or to terminate this **Agreement** in accordance with Article 17.
- 16.5. The **EIB** may suspend the implementation of the **Agreement**, in full or in part, if it has credible evidence that substantial errors, other administrative or financial mismanagement situations, fraud or breach of substantial obligations have been committed by the **UNDP** in the implementation of the **Action**, or that systemic errors have occurred which call into question the reliability of the **UNDP**'s internal control systems or the legality and regularity of the underlying transactions.
- 16.6. Before suspending the implementation of the **Agreement** pursuant to Article 16.5, the **EIB** shall formally notify the **UNDP** of its intention to suspend and the reasons thereof, and invite the **UNDP** to submit its written observations, if any. If the **UNDP** does not submit any observations within 30 calendar days of receiving the written notification from the **EIB**, or if, after examination of the observations submitted by the **UNDP** the **EIB** decides to pursue the suspension, the **EIB** may suspend the implementation of this **Agreement**, in whole or in part, by giving the **UNDP** a seven calendar days written notice, without prejudice to the right of the Parties to enter into discussions in order to find mutually acceptable arrangements necessary to continue with the part of the **Action** that is not suspended. However, any costs incurred by the **UNDP** during the suspension enacted pursuant to Article 16.5 and related to the part of the **Agreement** suspended, shall not be eligible to be covered by the **Contribution** and shall not otherwise be reimbursed or covered by the **EIB**.

ARTICLE 17 – Termination

- 17.1. If either Party justifiably believes, at any time, that the purposes of this **Agreement** can no longer be effectively or appropriately carried out, or due to **Force Majeure** or other unforeseen circumstances beyond the control of the Parties (circumstances which, for the avoidance of doubt, may include the receipt by the **EIB** of a notification from the **Commission** or other competent **Union** authority, including as a result of the adoption of a **Union** decision identifying a violation of human rights or in cases such as crisis entailing a change of **Union** policy, which has as

- purpose or effect to prohibit or limit the **EIB's** ability to commence or continue operating in the sector of the **Action** or in Ukraine), can no longer be carried out, may, after due consultation with the other Party, terminate this **Agreement** by giving the other Party a 60 calendar days prior written notice.
- 17.2. Where this **Agreement** is terminated pursuant to Article 17.1, the final amount of the **Contribution**, subject to the maximum amount or percentage, as applicable, specified in Article 5.2, shall cover the eligible costs incurred by the **UNDP** for the part of the **Action** carried out up to the date of termination, and, if early termination is decided after a suspension pursuant to Articles 16.1 or 16.2, the unavoidable residual expenditures incurred by the **UNDP** during the notice period and resulting from any legal commitments the **UNDP** entered into for the implementation of that **Action** before receiving or serving the written notice of termination and which the **UNDP** cannot reasonably terminate in legal grounds. If however the **Financing Documentation** does not recognize such costs as eligible under the **Contribution**, the Parties shall consult each other with a view to agreeing a mutually acceptable solution.
- 17.3. With due regard to the principle of proportionality, the **EIB** may terminate this **Agreement** if the **UNDP**:
- (a) fails to fulfil a material obligation incumbent on it under the terms of the **Agreement**;
 - (b) is guilty of misrepresentation or submits false or incomplete statements to obtain the **Contribution**, or provides reports that do not reflect reality to obtain or keep that **Contribution** without cause;
 - (c) engages in prohibited conduct (including fraud), other administrative or financial mismanagement, or any other illicit practice that comes about either by act or omission and which has or would have the effect of charging an unjustified item of expenditure to the **Contribution**, or finds itself in any other of the cases identified in Article 16.5, as evidenced by credible evidence in the possession of the **EIB**.
- 17.4. Before terminating this **Agreement** pursuant to Article 17.3, the **EIB** shall formally notify the **UNDP** of its intention to terminate and the reasons thereof, and invite the **UNDP** to submit its written observations, including proposals for remedial measures, if any. If the **UNDP** does not submit any observations within 30 calendar days of receiving the written notification from the **EIB**, or if, after examination of the observations submitted by the **UNDP** the **EIB** decides to pursue the termination, the **EIB** may terminate this **Agreement** by giving the **UNDP** a seven calendar days written notice.
- 17.5. Where this **Agreement** is terminated pursuant to Article 17.3, the final amount of the **Contribution**, subject to the maximum amount or percentage, as applicable, specified in Article 5.2, shall only cover the eligible costs incurred by the **UNDP** for the part of the **Action** carried out up to the date of termination.
- 17.6. The **UNDP** may terminate this **Agreement** if the **EIB** fails to perform any of its material obligations under this **Agreement** and such failure to perform shall have continued for a period of 30 calendar days after the **UNDP** has given written notice thereof to the **EIB** of the non-compliance at the end of which said non-compliance is un-remedied or the **EIB** has not provided a satisfactory explanation.
- 17.7. In all cases of termination pursuant to this Article 17, the Parties must take all reasonable measures in their respective competences to minimise the costs and any possible damage.
- 17.8. Neither Party is entitled to claim indemnity from the other Party on account of the termination of this **Agreement**.

ARTICLE 18 – Recovery

- 18.1. Where an amount in respect of the **Contribution** is to be recovered under the terms of this **Agreement**, the **UNDP** shall repay to the **EIB** the amount due, in all cases in accordance with the terms below and subject, where relevant, to the consultation procedure described in Article 6. The **UNDP** shall ensure that its legal commitments entered into with any third party for or in the

implementation of the **Action** include appropriate terms allowing the **UNDP** to comply with the obligations specified in this Article 18.

- 18.2. In relation to Article 18.1, where the **UNDP** determines, in accordance with its applicable policies and procedures, that funds from the **Contribution** have been unduly paid to or incorrectly used by any third parties with which the **UNDP** has entered into legal commitments for or in the implementation of the **Action**:
- (c) the **UNDP** shall take all applicable measures in accordance with its relevant rules, regulations, policies and procedures to recover those funds. Upon recovery, the **UNDP** shall retain any amounts in respect of that **Contribution** thus recovered so that they may be re-used to cover eligible costs incurred in the implementation of the **Action**; or if no longer needed for the purposes of implementing that **Action**, return such funds to the **EIB**, into the account designated by **EIB** in the relevant debit note; or
 - (d) where the **UNDP** is not able to recover all or part of such amounts or considers that recovery should not be pursued, the **UNDP** shall promptly inform the **EIB** thereof, providing all the necessary details, upon which the Parties shall consult in good faith with a view to agreeing on a mutually acceptable solution. To the extent that:
 - (i) the **UNDP** demonstrates that **UNDP's** oversight and accountability mechanisms have been and are being fully applied in connection with the amount due and that non-recovery is not due to error or negligence on the part of the **UNDP**, and
 - (ii) either the **UNDP** has exhausted all recovery measures available to it under its applicable rules, regulations, policies and procedures referred to in Article 18.1 (a) or the **UNDP** otherwise considers, in line with said applicable rules, regulations, policies and procedures, that recovery should not be pursued, including for reasons related to the opportunity, appropriateness and cost-effectiveness of the initiation of legal actions,
 the **EIB** shall duly consider waiving the recovery of the amounts affected.
 - (e) if the **UNDP** intends to claim any legal costs from the **Contribution**, it shall consult and obtain the agreement of the **EIB** in this respect prior to bringing any legal proceedings that may generate such costs.
- 18.3. Disbursements to the **UNDP** pursuant to Article 6 are without prejudice to the right of the **EIB** to dispute, on the basis of the terms of this **Agreement**, the eligibility of any amount claimed by the **UNDP** to be covered from the **Contribution**, and to recover that amount from the **UNDP**. The relevant provisions of Article 6 shall apply.

ARTICLE 19 – Force Majeure and Liability

- 19.1. Neither Party shall be held in breach of any of its obligations under this **Agreement** if it is prevented or delayed in performing those obligations by **Force Majeure**. In this respect, upon occurrence of **Force Majeure**, the Party facing it shall (i) promptly notify the other Party thereof, describing its effect on performance, and how long that Party expects it to last; (ii) update that information as regularly as necessary; (iii) use its best efforts to limit the damages to the other Party; and (iv) resume performance under this **Agreement** as soon as feasible.
- 19.2. The **EIB** shall not be held liable for any death, injury, damage or loss including reasonable legal counsel fees and expenses that may be sustained by the **UNDP**, its personnel and/or contractors in connection with or as a result of the implementation of the **Action** or this **Agreement**, except where such death, injury, damage or loss is the direct result of an action or omission of the **EIB** due to **EIB's** fraud, gross negligence or wilful misconduct.
- 19.3. Neither the **EIB** nor any donor under the **Mandate** shall under any circumstances or for any reason whatsoever be held liable towards third parties, including liability for damage or injury of any kind sustained by such third party in respect of or arising out of the implementation of the **Action**, including as a result of a violation of the third party's **Intellectual Property Rights**.

ARTICLE 20 – Amendments, assignment of rights, and transfer of obligations

- 20.1. Any amendment to this **Agreement**, including its Annexes, shall be set out in an instrument in writing duly signed by both Parties. Changes of address or of contact details may simply be communicated to the other Party in writing, in accordance with Article 21.
- 20.2. A Party may not assign or transfer to a third party, or otherwise dispose of, any of its rights or obligations under this **Agreement** without the prior written consent of the other Party.

ARTICLE 21 – Notices and communications

- 21.1. Any notice or other communication to be served under this **Agreement** must be in writing and shall state the title of this **Agreement** ("*EIB – UNDP Agreement in respect of advisory support to be provided to public authorities and publicly-owned communal enterprises in Ukraine in support of the implementation of certain energy efficiency investment sub-projects*").
- 21.2. Except otherwise provided in this **Agreement**, any notice or communication given under or in connection with this **Agreement** must be in English, or if not in English and so required by the **EIB**, accompanied by its translation into English. In this case, the English translation shall prevail unless the document is a constitutional, statutory or other similar official document.
- 21.3. All notices and correspondence in relation to this **Agreement** must be sent by post or, to the extent agreed by the Parties in writing, by e-mail or other means of electronic communication, to the following addresses:

For the **EIB**

European Investment Bank
EIB Global Directorate
98-100, boulevard Konrad Adenauer
L-2950 Luxembourg
Attention: Head of Public Sector East Division
e-mail: r.rybacki@elb.org

For the **UNDP**

United Nations Development Programme in Ukraine
1 Klovsy Uzviz
Kyiv 01021, Ukraine
Tel: +38 (044) 253-9363, ext. 130
Attention: UNDP Resident Representative a.i.
e-mail: manal.fouani@undp.org

- 21.4. Any change made to the above communication details shall have effect only after it has been notified in writing in paper or electronic form to the other Party at the above addresses.
- 21.5. Notices and other communications are deemed to have been made when they are received by the receiving Party.

ARTICLE 22 – Language and dispute settlement

- 22.1. The language of this **Agreement** and of all written communications between the **EIB** and the **UNDP** shall be English.
- 22.2. This **Agreement** and any dispute or claim in relation to the interpretation or application of this **Agreement** shall be governed by and construed in accordance with the recognised principles of international law.
- 22.3. The Parties shall endeavour to settle amicably any dispute that may arise between them in relation to the interpretation or application of this **Agreement**. In this respect, once a dispute has arisen, the claimant Party shall notify the other Party in writing of the dispute, stating its position on the dispute and any solution which it envisages, and requesting amicable settlement. The other

Party shall respond to this request for amicable settlement within 30 calendar days of receiving the request, stating its position on the dispute and the solution proposed by the claimant Party, and, as needed, its own envisaged solution. Unless the Parties agree otherwise in this initial exchange of information, the maximum period of time for reaching an amicable solution through negotiation shall be of 120 calendar days from the initial request. If a Party does not agree to the other Party's request for amicable settlement, or if the other Party does not provide its response within the timeframe foreseen in this Article 22.3 and the Parties have not agreed in writing to a different timeframe, or if no amicable settlement is reached within the maximum period prescribed in this Article 22.3, the amicable settlement procedure is considered to have failed.

- 22.4. The Parties agree that any disputes which may arise between them in relation to the interpretation or application of this **Agreement** and which the Parties cannot settle amicably, including any question regarding its existence, validity, interpretation, breach or termination, shall be settled by final and binding arbitration in accordance with the **Arbitration Rules**.
- 22.5. The arbitral tribunal shall be appointed in accordance with the **Arbitration Rules**. In case of failure to set up an arbitral tribunal within three months following the request for arbitration, the arbitral tribunal shall be appointed by the Secretary-General of the Permanent Court of Arbitration. Arbitrators shall be independent and impartial. Any challenge of an arbitrator shall be decided by the Secretary-General of the Permanent Court of Arbitration.
- 22.6. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, validity or effectiveness of the arbitration agreement. The arbitral tribunal may make such ruling in a preliminary decision on jurisdiction or in an award on the merits, as it considers appropriate in the circumstances. However, the arbitral tribunal shall have no authority to award punitive damages.
- 22.7. The Parties shall agree in writing on the seat of the arbitration. The language of the arbitration shall be English.
- 22.8. The Parties agree to be bound by the arbitration award rendered by the arbitration tribunal in accordance with this Article 22, as the final adjudication of any such dispute or claim.

ARTICLE 23 – Final provisions

- 23.1. No failure or delay by a Party to exercise any of its rights under this **Agreement** may be construed as a waiver of such right.
- 23.2. Nothing in this **Agreement** shall be deemed to be a waiver, renunciation, or modification, whether express or implied, of the privileges, immunities, and exemptions enjoyed by either Party, their Governors, Directors, Alternates, officers, employees, or experts performing missions for them, pursuant to their respective constituent documents, international convention, or any applicable law, all of which are expressly reserved, or as submitting the **UNDP** to any national court jurisdiction.
- 23.3. If any provision of this **Agreement** is held invalid or unenforceable, such provision shall be severed and shall be inoperative. Provided that the fundamental terms and conditions of this **Agreement** remain valid and enforceable, the rest of this **Agreement** shall remain operative and binding on the Parties, and the Parties shall take all necessary measures to agree on terms to replace those found invalid, or unenforceable.

IN WITNESS WHEREOF the Parties hereto have caused this **Agreement** to be executed on their behalf in four originals in the English language, of which two for the **EIB** and two for the **UNDP**.

Done in Berlin, Germany, on this day of October 25th, 2022.

Signed for and on behalf of
EUROPEAN INVESTMENT BANK

Signed for and on behalf of
UNITED NATIONS DEVELOPMENT PROGRAM

Teresa CZERWINSKA
Vice-President

Manal FOUANI
Resident Representative *ad interim*
United Nations Development Program in Ukraine

ANNEX A – THE ACTION

Part I – Description of the Action

Abbreviations	
CoM	Covenant of Mayor
EE	Energy Efficiency
EIB	European Investment Bank
EU NIP	EU's Neighbourhood Investment Platform
MoF / MoFin	Ministry of Finance
MCTD	Ministry of Communities and Territories Development
PIU	Programme Implementation Unit (at local level)
PMSU	Programme Management and Support Unit (at central level, within MCTD)
POM	Programme Operational Manual
UNDP	United Nations Development Programme
UPBEE	Ukraine Public Building Energy Efficiency

1. The Programme

The European Investment Bank (EIB) is the long-term lending institution of the EU, it is the bank owned by and representing the interests of the EU Member States. At the request of Ukrainian Government, the EIB provides financing for comprehensive energy efficient rehabilitation of public buildings in Ukrainian cities through the Ukraine Public Buildings Energy Efficiency (UPBEE) Programme. The Programme is supported by strong technical assistance and encourages applications from small and medium-size municipalities and local government. In addition to energy efficiency renovations, the Programme allows the finance of repair (including related to war damages) and adaptations needed in public buildings to better suit the needs of Internally Displaced Persons (IDPs) and hosting communities.

Main Programme Indicators:

- EIB loan EUR 300mln, supported by E5P (EUR 4m) and EU NIP (EUR 5m) grants
- Borrower: Ukraine. EIB lends to Ukraine according to the provisions of the Finance Contract. The financial resources will be on-lent to Beneficiaries following a selection process.
- Promoter: Ministry of Communities and Territorial Development of Ukraine
- Beneficiaries: As defined in Article 1 of the Agreement.
- Geographical focus: all regions of Ukraine on territory under control of Ukraine. The Sub-Projects (or any component or part thereto) should not be located in a conflict zone, at a distance closer than 30 km from the military operations or on the non-government controlled territory.
- The goal of the Programme: Comprehensive energy efficient rehabilitation of public buildings, including kindergartens, schools and health buildings, etc. In the context of public buildings being targeted by the shelling and destroyed or damaged as a result, the Programme would allow to repair the still relatively healthy public buildings that need some energy efficiency renovations and repair of lighter damages (up to 50% Sub-Project cost).
- Eligible investments: Raising thermal integrity of buildings envelope, installation of heat substation with automatic weather-dependent and programmed control of in-door air climate, improving energy efficiency of building heat distribution, ventilation and lighting systems, implementing energy management system. Energy efficiency measures should cover at least 50% of the overall Sub-Project cost. The remaining Sub-Project cost could cover structural measures (strengthening building envelope) and other non-energy efficient measures if it is economically detrimental to complete them in different phases (for example, installation of lightning protection system, installation of facilities for limited mobility people, restoration of outside steel fire ladders). After rehabilitation, buildings should comply with minimum energy performance requirements required

by respective legal and regulatory documents. Repair of damages caused by the war. Adjustments to the building to make it suitable to host IDPs.

- The loan funds do not cover: VAT and costs of the Technical Structural Survey and Building Energy Performance Certificate based on the initial energy audit prepared according to the Ukrainian legislation. The loan also does not cover other taxes and duties, land acquisition, purchase of buildings, maintenance and other operating costs, operational expenses, acquisition of second-hand assets, interest during construction, purchase of licences for the use of non-generated public resources (e.g. telecom licences), patents, brands and trademarks. Purely financial transactions are also not eligible. If incurred, these costs should be covered by the Beneficiaries.
- Procurement: Threshold for procurement under national public procurement procedures (ProZorro) (observing EIB procurement rules) is €5 million. Procurement for Sub-Projects with a value larger than €5 million will be carried out according to the international procurement procedures.
- First Call for proposals: Expected in October 2022. The first Call for proposal will foresee two batches: one batch for the so-called "early adopters", the Sub-Projects that have designs and audits available and are ready to start with procurement and construction; and one batch for Sub-Projects that still have to develop audits and technical designs.
- Loan repayment period: 20 years
- Grace period: 5 years
- Interest rate: financially sustainable interest rates
- Grant support: All Beneficiaries will benefit from technical assistance support financed by the E5P (the Technical Assistance operations and/or the Action under this Agreement) and the EU NIP (through separate contracting arrangements to be put in place by the EIB). Additional investment grant support will be provided to small municipalities or local government (indicatively with a population less than 50 000 people).

Key Programme Stakeholders and Bodies and Snapshot of Implementation Strategy

The Programme is financed through a framework loan made available by the EIB, under the Finance Contract, to the Borrower (Ukraine), represented by the Ministry of Finance (MoF) and the Ministry of Communities and Territorial Development (MCTD) as Promoter.

The EIB loan proceeds will be on-lent to Beneficiaries following two-stages selection process, as referred to above

Ukraine will provide the loan funds to the Beneficiaries under terms and conditions as specified in the *Loan Fund Transfer Agreement* between the MoF, the MCTD and each Beneficiary. The MoF will be involved in the approval of Sub-Projects considering creditworthiness of the Beneficiaries.

Substantial technical assistance will be involved to support UPBEE Programme implementation both at the local and central level. In particular:

1. A Technical Assistance team at the central level will provide support to MCTD, through its Project Management Support Unit (PMSU), and MoF;
2. A Technical Assistance team will support the Covenant of Mayors in ensuring the visibility of the loan, including through an awareness raising campaign at regional and local level, and in the provision of advisory support to Beneficiaries' Project Implementation Units (PIUs);
3. Support for the development of technical design documentation and energy audit of the proposed Sub-Projects will be available for small Beneficiaries (indicatively with a population less than 50 000 people, pre-selected during the first stage of application process).
4. UNDP, under the Action, will provide support/advice to the Beneficiaries to finalize the Sub-Project preparation (audits, Technical Design, tender documents, etc), carry out procurement and implement the Sub-Project until commissioning (as further described below).

2. Role of the UNDP in the Programme

Objective

Under the terms of Article 3.11 of the Agreement, the UNDP team will assist Beneficiaries during the entire Sub-Project cycle. UNDP will assist Beneficiaries in revising energy efficiency audits and technical designs, ensuring institutional and administrative process, project management and support throughout the procurement and Sub-Project implementation process. UNDP will provide support for Sub-Project compliance and anticorruption monitoring according to the Finance Contract.

UNDP shall provide the support envisaged under the Action only with its own international and local personnel and all such personnel is subject to UNDP staff rules, as well as to UNDP's applicable policies in respect of fraud, corruption, and other misconduct and/or wrongdoing (as these terms are defined in the said policies).

This advisory support shall not be made available, directly or indirectly, to or for the benefit of a sanctioned target (entity/individual), as specified in Article 3.11.

Cooperation with other UPBEE Stakeholders

UNDP support will take place within the general implementation process of the UPBEE Programme. It will involve relations with:

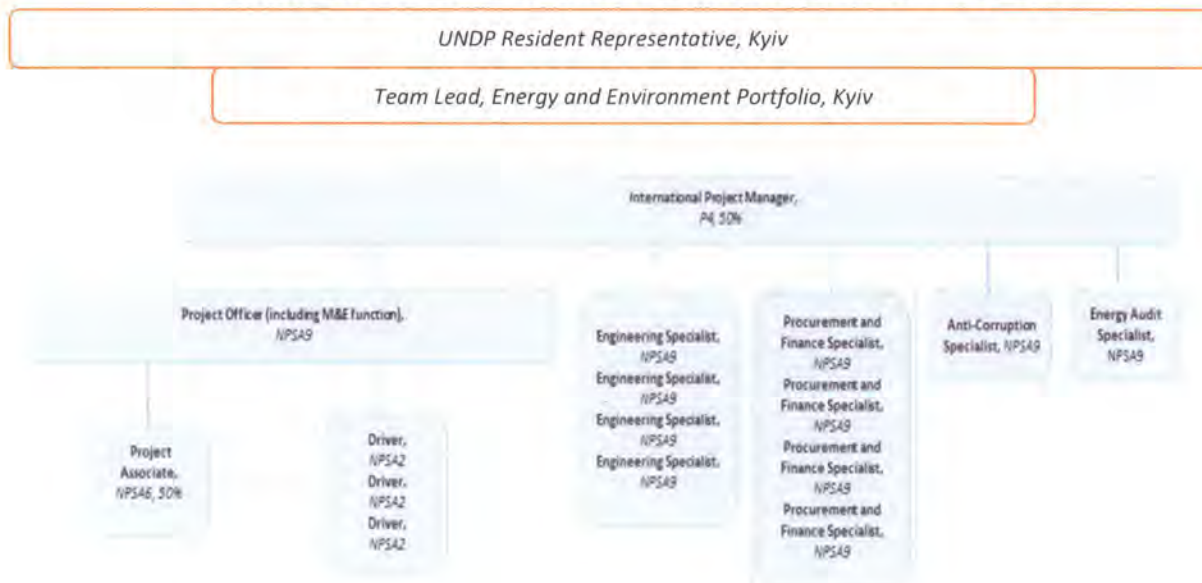
- **MCTD:** UNDP is expected to liaise with MCTD during the implementation of the Action and to participate in the Working Group meetings and in Steering Committee, as observer.
- **PMSU and its Technical Assistance team:** The PMSU establishes the Programme Operational Manual, as well as the Environmental and Social Management System (ESMS), not only describing the processes but also providing the template for procedures, instructions, check-lists to help the Beneficiaries in all the phases of their Sub-Project. In addition, it develops a Programme Management Platform (PMP) and the Programme website. UNDP will provide support to the Beneficiaries in using these PMSU tools, and may suggest regularly improvements of the POM to the PMSU to streamline the implementation. UNDP shall also provide regular reporting on the status of the Programme and different Sub-Projects and report any red flag it identifies.
- **Covenant of Mayors (CoM):** the CoM provides support to the Beneficiaries in the preparation of their application to UPBEE, and training to their PIUs. UNDP takes over the provision of support to Beneficiaries from the pre-selection of a Sub-Project until its completion. UNDP shall liaise regularly with CoM to ensure that the Beneficiaries are correctly informed about the Programme's implementation process and that the PIUs are properly trained for the implementation of the Sub-Project.
- **EIB:** UNDP provides the reporting on the Action (as specified in Article 4 of the Agreement), and shall also report immediately any red flag it identifies in the Programme implementation.
- **Design and Construction contractors:** although the primary responsibility of design and construction work implementation lies with the PIUs, UNDP may identify some horizontal issues met throughout the Programme. In coordination with PMSU, UNDP may take action to remedy at higher level, through information, discussion with professional association etc.
- **Working Group:** includes representatives of the Promoter (MCTD-PMSU), MoF, EIB, TA, the Covenant of Mayors, UNDP and other stakeholders, as may be agreed between the EIB and the Ukraine. The Working Group for the UPBEE Programme will be responsible for the working level matters of the Programme implementation.
- **Steering Committee:** responsible for a high level Programme management and for ensuring that progress is being made towards achieving the Programme goals and objectives. It shall be composed of representatives of MCTD, MoF, EU Delegation, EIB, the Covenant of Mayors and UNDP.

Local Implementation Capacity

UNDP has presence in the government-controlled areas of Ukraine. The local staff presently contracted has a vast experience in providing technical advisory services in engineering, energy audit, procurement, and anti-corruption monitoring.

UNDP will establish a team as described below. This organization can evolve over time, with mutual agreement of the Parties, to better fit the needs of the programme.

UKRAINE PUBLIC BUILDING ENERGY EFFICIENCY (UPBEE) EUROPEAN INVESTMENT BANK TECHNICAL ASSISTANCE TEAM



3. Specific Advisory Support Activities

Under the Action, the UNDP shall provide the following main advisory support activities in support of the implementation of the Programme:

Strengthened local governance capacity for Sub-Project's preparation and implementation:

- Provide capacity development to the relevant units and departments of the Beneficiaries in the Sub-Project cycle management: preparation, internal approval, implementation (integrated Sub-Project preparation and implementation cycle), compliance, monitoring and impact analysis;
- Collaborate with MCTD, PMSU, CoM and EIB in preparation of the Call for Proposal, e.g. by suggesting changes in criteria;
- Collaborate with other donor-funded technical assistance / advisory projects in the regions in geographical and/or thematic areas of relevance for the Programme.

Advisory support to the Programme and Sub-Projects preparation:

- Provide support, as required, to Beneficiaries (particularly those lacking sufficient construction and procurement capacities) throughout the entire Sub-Project cycle, including: Sub-Project design and engineering, procurement, due diligence (social and environmental), contract administration, payments, monitoring and supervision of construction, compliance, anticorruption monitoring support (including in relation to sanctions as per the Finance Contract) with a view to ensuring the preparation of quality Sub-Project documentation acceptable to the EIB;

- Support the local PIUs in the procurement of Energy Audits and Technical Design services (when funded by the Beneficiary) and (for all Beneficiaries) in monitoring the implementation of these services, with support of templates and tools provided by the PMSU;
- Follow-up the administration procedures and verify compliance with the standard unit costs;
- Follow-up the procurement procedures for implementation to verify their compliance with the EIB rules and guidelines as well as the established instructions and operational procedures;
- Identify simple project milestones for each Sub-Project, and collaborate with PMSU in finalization and approval;
- Support the Beneficiaries to develop an Environmental and Social Management Plan as part of their operational manual and in line with EIB standards, including i) screening criteria for standards triggers, ii) stakeholder engagement framework, iii) environmental and health & safety plan, iv) waste management plan and v) monitoring fiches.
- Review permits, certification and other requirements (esp., energy audit and certificate, state expertise, if required environmental impact assessment) required; advise the stakeholders and inform PMSU, MCTD and the EIB in case there is a risk of operational Sub-Project delay due to the absence of permits or certificates;
- Support PIUs and the Beneficiaries in Sub-Project budget preparation and validation;
- Support the Beneficiaries in communication with public, local and national stakeholders;
- If PIUs are lacking some competences after initial CoM training: Provide trainings to Beneficiaries on Sub-Project-related documentation, procurement, financial management and overall monitoring to ensure highest standards of integrity in implementation of the Sub-Projects and the Programme. In particular, the UNDP may provide capacity development to the relevant units and departments of municipal administrations: preparation, implementation (integrated project preparation and implementation cycle), monitoring and impact analysis; support and contributions to the preparation of reports, manuals and/or instructions/procedures documents for municipal authorities to follow, in support for implementation of the UPBEE;
- Report to the Working Group any issue that could delay Sub-Project preparation or future Sub-Project implementation.

Advisory support to the Sub-Projects implementation and monitoring:

- Support the procurement of required services and construction works (supervision, construction, eventually maintenance) with support of templates and tools provided by the PMSU;
- Oversee the progress with the physical and financial implementation of the approved Sub-Projects;
- Provide Sub-Project monitoring, with the progress verification travels to the Sub-Project sites;
- Verify and ensure Sub-Projects stakeholders (occupants of the buildings, public users etc...) participation in close coordination with the MCTD, PMSU and its consultants, and ensure that ESMP is being implemented;
- Collaborate with the PMSU and its Technical Assistance team in the following technical areas:
 - ✓ Identification of unit costs and standard costs for typical and specific Sub-Projects, and assess any cost deviations that could indicate mal-practices, in relation to each Sub-Project; document the reasons and promptly inform the MCTD, the PMSU and the EIB;
 - ✓ Assessment of acquisition of sub-standard services and/or sub-standard equipment in relation to each Sub-Project that might indicate mal-practices and irregularities; promptly inform the MCTD, the PMSU and the EIB;
- Prepare Sub-Project implementation plans or other documentation for the benefit of the Beneficiaries, as required and using general support (templates, tools) provided by the PMSU.
- Support the Beneficiaries in communication with public, local and national stakeholders;

- Report to the Working Group any issue that could delay Sub-Project implementation.

Improved Sub-Project compliance, progress evaluation and monitoring for effectiveness and efficiency:

- Assist the MCTD (as Programme Promoter) in the MCTD's compliance obligations under the Finance Contract in relation to Beneficiaries to be selected by the Promoter during Sub-Projects' selection;
- Assist the Beneficiaries in their compliance obligations under the Finance Contract in relation to the service providers and contractors to be selected by them during the Sub-Projects' procurement activities.

Monitoring and sanctions screening

- Having regard to the principles stated in Article 3.10 of the Agreement (which are also appropriately included in the Finance Contract), the MCTD (and/or the Beneficiaries) cannot, amongst others, make the EIB loan funds available, directly or indirectly, to or for the benefit of entities which are the subject or target of sanctions / restrictive measures.
- Hence the MCTD would carry out sanction screening covering the compliance framework under the Finance Contract on Beneficiaries (and their key persons), and the Beneficiaries would carry out such screening on third parties (to be) involved in the Sub-Project (such as main contractors, main suppliers) from pre-selection stage on an on-going daily basis until the end of the Sub-Project.
- UNDP will provide Sub-Project monitoring through the regular visits to the Sub-Project sites, and report its findings to the Working Group; review and document the implementation progress against the agreed plans and milestones;
- In cooperation with PMSU, the UNDP will establish a comprehensive and user-friendly Evaluation and Monitoring Framework for each Sub-Project, set baseline data, qualitative and quantitative indicators, significant milestones and impact values;
- The UNDP shall help establish a rigorous and transparent monitoring and reporting system for the stakeholders and Beneficiaries to periodically monitor results, produce succinct reports and, importantly, establish a mechanism of corrective measures/actions;

Improved financial management in sub-project implementation:

The UNDP shall:

- Follow-up the procurement procedures and verify compliance with the standard costs; verify compliance with the established EIB rules and guidelines;
- Closely cooperate with the PMSU experts and MCTD in following the established Programme Operations Manual procurement and quality of information submitted by the Beneficiaries;
- Help prepare the financial, tendering, reporting and other data information for submission to PMSU, MCTD or other stakeholder authorities;
- Support payments to contractors and liaise with MoF/MCTD in relation to State budgeting.
- Promote anti-corruption activities through advocacy and strictly following the established procurement regulations and procedures; immediately inform the Working Group of any suspicion of corruption or ineffective use of Programme resources – support the follow up and implementation of the agreed Corruption Risk Mitigation Approaches and Action Plan which has been endorsed by EIB.

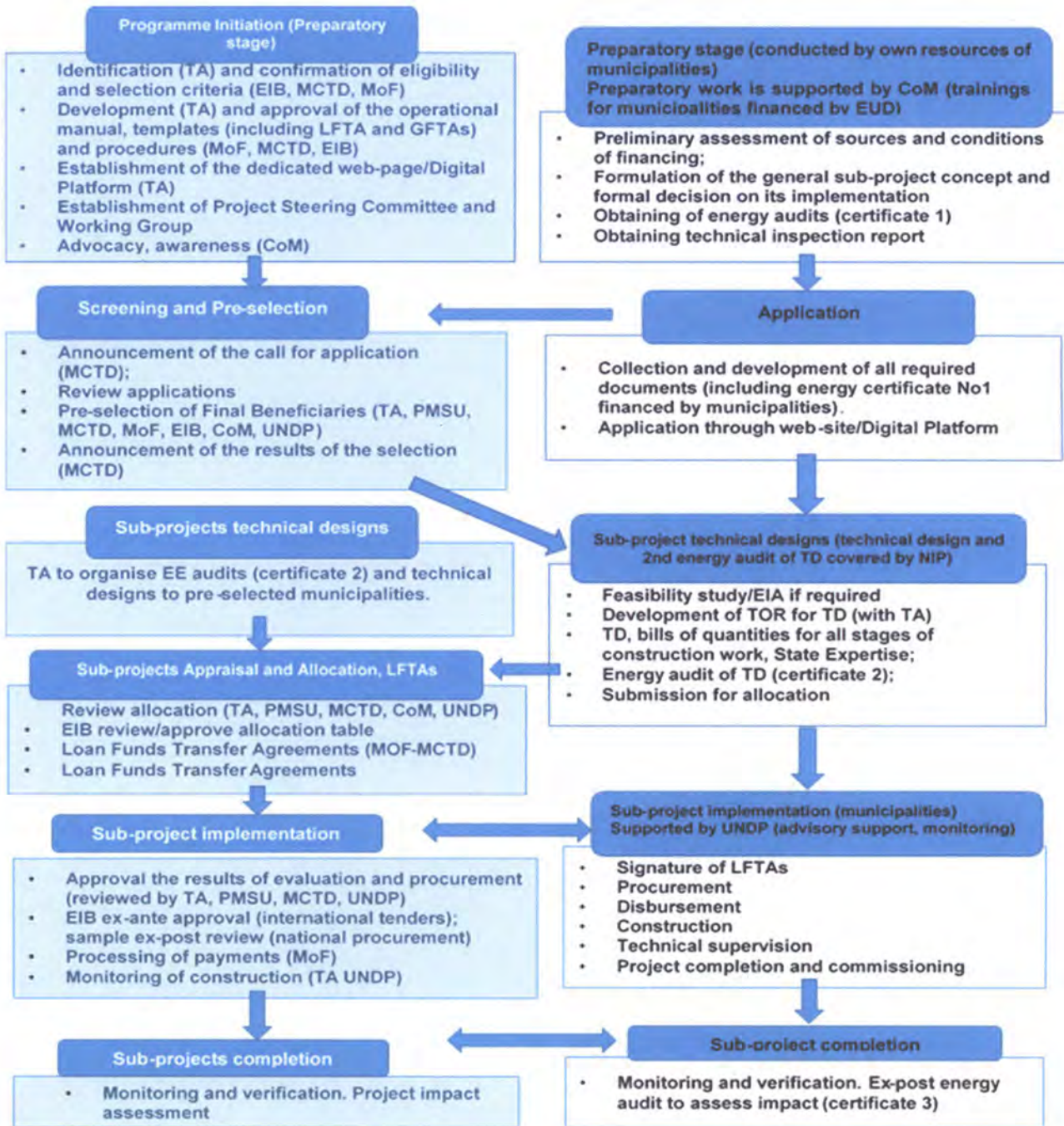
- Collaborate with the PMSU experts and MCTD, and EIB technical supervisory teams (responsible for certification and final acceptance of works) in the following control/inefficiency prevention matters:
 - ✓ identification of unit costs and standard costs for typical and approved Sub-Projects, and assess any cost deviations that could indicate of mal-practices, promptly informing the MCTD and EIB;
 - ✓ assessing for each Sub-Project any indications of acquisition of sub-standard services and/or sub-standard equipment that could indicate of mal-practices, promptly informing the MCTD and EIB;
 - ✓ participate in local inspection visits (together with PMSU experts, MCTD and the EIB supervisory technical teams).

UNDP shall pay particular attention to the following matters:

- UNDP shall proceed in partnership and collaboration with the EIB;
- UNDP undertakes to ensure that its personnel co-operate at all times with the EIB in relation to the provision of the advisory support under the Action;
- UNDP will ensure that the dedicated team of experts UNDP will assign to the implementation of the Action will be selected based on pre-defined criteria, including professional qualifications, language skills and work experience;
- UNDP will provide supervision and guidance and assess the work of its designated team, and will ensure collaboration with the other members of the EIB's Programme team;
- UNDP will provide the operational and financial reports and any supporting documentation as specified in Article 4 of the Agreement; UNDP will provide monthly timesheets of the team it assigns to the Action;
- UNDP will provide workspace, offices, vehicles and equipment for the operation of this team;
- The Action will be monitored by the EIB (mainly through contact persons from EIB's Projects and EIB Global Directorates), mainly through the reports, monthly briefs and other deliverables foreseen in Article 4 of the Agreement or this Description of the Action, as well as via site visits.

MCTD (Loan Promoter), MoF, EIBTA

Final Beneficiaries, PIUs, Local Level TA



ANNEX A – THE ACTION

Part II – Budget of the Action

Indicative budget breakdown (EUR):

		Estimated number of working days	Fee rate (€ per working day)	Amount
				€
DIRECT COSTS				
<i>Key experts</i>				
International Project Manager, P4 - 50% (1)		240	1 300	312 077
Project Officer (including M&E function), NPSA9 (1)		500	185	92 470
Engineering Specialist, NPSA9 (4)		1 880	185	347 687
Energy Audit Specialist, NPSA9 (1)		240	185	44 386
Anti-Corruption Specialist, NPSA9 (1)		460	185	85 072
Procurement and Finance Specialist, NPSA9 (4)		1 880	185	347 687
Project Associate, NPSA6 -50% (1)		260	139	36 013
Driver, NPSA2 (3)		1 380	88	121 831
TOTAL DIRECT COSTS		6 840		1 387 225
INDIRECT COSTS (as defined in Article 5.6 (b))	44%			612 775
MAXIMUM CONTRIBUTION AMOUNT				2 000 000

ANNEX B.1 – REQUEST FOR DISBURSEMENT FORM

[To be provided on letterhead paper of the UN Partner]

REQUEST FOR DISBURSEMENT

[***Date of the request for payment***]

For the attention of: [***Name of the EIB's designated contact person and department***]

European Investment Bank
98-100 boulevard Konrad Adenauer
L-2950 Luxembourg

Subject: Request for disbursement under Agreement "[Title]"

Dear Sir/Madam,

We refer to the Agreement in caption. In accordance with Article 6, we hereby request the [first] / [second] / [...] disbursement of the Contribution under the Agreement mentioned above.

Amount requested: [EUR] / [USD] [•]

corresponding to the forecasted disbursements and payments for the period [date from] to [date to].

Please find attached the following supporting documents:

-
-

[any documents requested under Article 6]

The disbursement should be made to the following account⁴:

Account Name: [•]
IBAN / Account Number: [•]
Currency: [•]
BIC / Swift Code: [•]
Bank Name: [•]
Bank address: [•]
Branch code (ABA)⁵: [•]

⁴ The UN Partner will have to provide, together with the first request for disbursement, an electronic confirmation from the bank at which the account is open that the account exists, its details, and the account holder identity. Such confirmation is no longer needed for subsequent disbursements if the account details remain unchanged, but a new one will have to be provided in case of changes of, or to the account.

⁵ For US only

Account holder name: [●]
Account holder address: [●]
Intermediary Bank (if applicable): [●]

We hereby certify on honour that the information contained in the financial reports supporting this request for disbursement is complete, reliable and true, that the costs incurred reported therein can be considered eligible in accordance with the Agreement, and are substantiated by adequate supporting documents and accounting records. We hereby represent and warrant that we have not obtained funds, or do not intend to obtain funds, from any donor financing other than the Contribution under the Agreement to meet the same costs.

Yours faithfully,

<signature>

ANNEX B.2 – MODEL MANAGEMENT DECLARATION

[To be provided on letterhead paper of the UN Partner]

MANAGEMENT DECLARATION

I, the undersigned, [insert forename and surname], in my capacity as [insert function in the UN Partner] confirm that in relation to the Agreement [insert reference of the Agreement], (the "Agreement"), based on my own judgement and on the information at my disposal, including, inter alia, the results of the audits and controls carried out, that:

1. The information submitted under Article 4 of the Agreement for the period from [dd/mm/yyyy] to [dd/mm/yyyy] is properly presented, complete and accurate;
2. The expenditure was used for its intended purpose as defined in Annex A of the Agreement;
3. The control systems put in place give the necessary assurances that the underlying transactions were managed in accordance with the provision of this Agreement;
4. The [UN Partner] performed the activities in compliance with the obligations laid down in the Agreement and applying its rules, regulations, policies and procedures, including a review procedure where applicable, as referred to in Articles 3 and 14 of the Agreement.

Furthermore, I confirm that I am not aware of any undisclosed matter which could harm the interests of the EIB.

[However, the following reservations should be noted:

- ...
- ...]

[insert place and date]

.....

(signature)

[Insert forename and surname]