

Annex XIV

AGREEMENT BETWEEN UNEP AS TREASURER OF THE MULTILATERAL FUND FOR THE IMPLEMENTATION OF THE MONTREAL PROTOCOL AND THE EXECUTIVE COMMITTEE OF THE MULTILATERAL FUND ESTABLISHED BY THE PARTIES TO THE MONTREAL PROTOCOL

WHEREAS the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer ("Protocol") to the Vienna Convention for the Protection of the Ozone Layer ("Parties") have established the Multilateral Fund for the Implementation of the Montreal Protocol ("Fund") to operate under the authority of the Parties through an Executive Committee to provide the financing of agreed incremental costs to enable Parties operating under paragraph 1 of Article 5 of the Protocol to comply with the control measures of the Protocol,

WHEREAS, at the request of the Parties, the Fund was established in accordance with the Financial Regulations and Rules of the United Nations and the Executive Committee entrusted the Executive Director of the United Nations Environment Programme ("UNEP") with its administration,

WHEREAS, the Parties have designated the United Nations Development Programme ("UNDP"), the World Bank ("Bank"), the United Nations Environment Programme ("UNEP") and the United Nations Industrial Development Organization (UNIDO) as implementing agencies for the work programme of the Fund,

WHEREAS, by decision of the Executive Committee, UNEP in addition to being designated as an implementing agency has acted as "Treasurer" of the Fund since 1991 free of charge, with responsibility for disbursing funds for activities to each of the implementing agencies, including itself, under the guidance of the Executive Committee,

NOW THEREFORE, the Executive Committee and UNEP hereby agree as follows:

Article I

1.1 UNEP, in its capacity as Treasurer, will administer the Fund in accordance with the Financial Regulations and Rules of the United Nations.

1.2 UNEP, in its capacity as Treasurer will at the beginning of each calendar year inform all Parties not operating under paragraph 1 of Article 5 of the Protocol of their contributions due to the Fund and request remittance of Parties' contributions. In this regard, UNEP will apply the fixed-exchange-rate mechanism approved by Decision XIV/40 of the Fourteenth Meeting of the Parties to the Montreal Protocol or in future amendments to this Decision to those Parties which qualify to use the mechanism.

1.3 UNEP, in its capacity as Treasurer, will acknowledge receipt of contributions from Parties and shall, from time to time, issue reminders to Parties whose contributions are outstanding.

1.4 UNEP, in its capacity as Treasurer, will administer any voluntary contributions from other sources.

1.5 UNEP, in the capacity as Treasurer, will collect and maintain an accurate accounting of pledges and contributions from donors, including bilateral contributions.

1.6 UNEP, in its capacity as Treasurer, will maintain an accurate account of funds approved by the Executive Committee as bilateral cooperation assistance and offset these funds against the concerned Party's contribution to the Fund.

1.7 UNEP, in its capacity as Treasurer, will place contributions paid by Parties in a bank account it will establish for the purpose of receiving such contributions.

1.8 UNEP, in its capacity as Treasurer, will provide, when requested, information on the rate of return on the investment of the Multilateral Fund trust funds held by UNEP.

1.9 UNEP, in its capacity as Treasurer, will design and manage a transparent system for issuance and encashment of promissory notes in accordance with predetermined schedules or as funds are needed by implementing agencies.

1.10 UNEP, in its capacity as Treasurer, will not be responsible for unpaid contributions by Parties.

1.11 The accounts of the Fund will be maintained in United States dollars.

Article II

2.1 UNEP, in its capacity as Treasurer, will design and maintain a financial reporting system for transfers, disbursements, interest and expenditures (consistent with Executive Committee decisions) that will allow uniformity, transparency and consistency when tracking flow of funds and facilitate comparability and reconciliation.

2.2 UNEP, in its capacity as Treasurer, will remit to the implementing agencies funds approved for them by the Executive Committee, and maintain a payment system to these agencies.

2.3 Funds remitted to the implementing agencies will be disbursed by them in accordance with their respective financial regulations and rules.

2.4 UNEP, in its capacity as Treasurer, will remit to UNEP the funds approved for the budget of the Fund Secretariat.

2.5 UNEP, in its capacity as Treasurer, will not be obligated to remit funds over and above those available in the Fund account.

Article III

3.1 The Executive Committee agrees to remunerate UNEP in its capacity as Treasurer, US \$500,000 annually for services it will provide pursuant to this Agreement, taking into account the functions described in Appendix I to this Agreement. This sum will remain unchanged for a period of five years as of the date of entry into force of this Agreement.

Article IV

4.1 UNEP, in its capacity as Treasurer, will submit accounts of the Fund to the Executive Committee for each calendar year based upon the expenditures incurred by the Fund Secretariat, the statements of expenditure submitted by the implementing agencies, taking into account interest earned by them on Fund balances they have held, as well as interest earned by UNEP on balances it holds as Treasurer of the Fund. In addition, UNEP will prepare clear reports on the status of the Fund to be submitted through the Fund Secretariat to the meetings of the Executive Committee.

4.2 UNEP, in its capacity as Treasurer, will undertake preparation of studies requested by the Executive Committee and / or by Meetings of the Parties to the Montreal Protocol, as relevant. UNEP will draw to the attention of the Executive Committee any circumstances where the costs of such studies would exceed the resources available.

4.3 UNEP, in its capacity as Treasurer, will provide direct support to the Executive Committee and its subsidiary bodies as necessary, including participation in Executive Committee meetings.

4.4 The accounts of the Fund will be subject solely to the Internal and External Audit of the United Nations. Should there be any comments made by the Auditors relating to the accounts, UNEP, in its capacity as Treasurer, will advise the Chief Officer of the Fund Secretariat and the Chairman of the Executive Committee immediately.

Article V

5.1 Any dispute, controversy or claims arising out of, or in connection with, this Agreement, will, unless they are settled by direct negotiation, be settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as at present in force. The Executive Committee and UNEP agree to be bound by any arbitration award rendered in accordance with this section as the final adjudication of any dispute.

Article VI

6.1 This Agreement shall enter into force upon signature by both parties and shall supersede previous Agreements.

6.2 This Agreement shall remain in force until such time as both parties agree to terminate it. Should one party wish to terminate the Agreement, such termination notice shall be given 90 days prior to its intended termination.

6.3 Any amendment to this Agreement shall require the concurrence in writing of both parties.

6.4 In case of conflict between the terms and conditions of this Agreement and the Financial Regulations of the United Nations, the latter will prevail.

for UNEP

for the Executive Committee

Date

Date

Appendix I

Functions of Treasurer of the Multilateral Fund

1. Multilateral Fund trust fund:

- 1.1. establishment and management of a trust fund for the management of the Multilateral Fund resources and financial reports;
- 1.2. calculation of the triennial and yearly pledges by each Party (some 42 Parties) in accordance with the terms of reference approved by the Parties to the Montreal Protocol in US dollars and national currencies as applicable;
- 1.3. keeping updated tools for the calculation of the distribution of pledges to the Parties which do not operate under Article 5 of the Montreal Protocol, in accordance with the United Nations scale of assessment;
- 1.4. calling for and sending reminders to the Parties for contribution payments, receiving the contributions, acknowledging the receipts and managing the bank account and the appropriate accounting for the transactions; and
- 1.5. making remittances to the implementing agencies¹ in accordance with the approvals of the Executive Committee of the Multilateral Fund.

2. Multilateral Fund bank account(s):

- 2.1. establishment of a bank account for receiving contributions by Parties and other voluntary contributions and effecting transfers and payments in accordance with the approvals of the Executive Committee;
- 2.2. management of the resources in the bank account with a view to maximizing the returns on any surplus funds not immediately needed; and
- 2.3. management of any other subsidiary (bank) accounts that are opened for the smooth operation of the Fund, for example, for the management of promissory notes and their subsequent encashments.

3. Bilateral cooperation assistance

- 3.1. maintaining an accurate report on the bilateral cooperation assistance (up to 20 per cent of a Party's assessed contribution per annum) approved for Parties by the Executive Committee for its direct implementation;
- 3.2. adjustment of pledges of Parties to account for bilateral cooperation assistance approved by the Executive Committee; and
- 3.3. introduction of the bilateral cooperation assistance's adjustments as reported in the annual progress reports on their implementation.

¹ Currently the agencies are: the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organization (UNIDO), and the World Bank

4. Fixed-exchange-rate mechanism:

- 4.1. monitoring and recording of the countries' inflationary parameters needed for the application of the fixed-exchange-rate mechanism in determining the Parties which qualify to using the mechanism and, secondly, fixing the national currency rates;
- 4.2. monitoring and recording of the various currencies exchange rates needed in the calculation of the fixed exchange rates for use in calculating the national currency pledges by the Parties which qualify to use the mechanism;
- 4.3. requesting the Parties qualifying to use the fixed-exchange-rate mechanism for confirmation of their decision to either make their payments to the Fund in national currencies or in United States dollars;
- 4.4. monitoring and recording of the performance of the fixed-exchange-rate mechanism by each Party, using the mechanism with a view to updating the shortfall or gain realized by the mechanism in totality;
- 4.5. monitoring and recording of the value of the promissory notes established within the fixed-exchange-rate mechanism with a view to having the current value at any time of the reporting on the status of the Fund;
- 4.6. monitoring and recording of the net gain or loss due to the implementation of the fixed-exchange-rate mechanism in order to properly factor it into the calculation of the net funds available for programming in the report on the status of the Fund; and
- 4.7. preparing any reports on the implementation of the fixed-exchange-rate mechanism as the Executive Committee or the Meeting of the Parties to the Montreal Protocol may require from time to time.

5. Multilateral Fund reports on the status of the Fund:

- 5.1. monitoring and recording of the yearly payments in the various forms (cash, promissory notes, bilateral cooperation assistance, and promissory notes encashments) by Parties to the Fund from inception to date for inclusion in the reports on the status of the Fund;
- 5.2. monitoring and recording of the other income elements such as interest and miscellaneous income (at the levels of the Treasurer and the implementing agencies) from inception to date for inclusion in the reports on the status of the Fund;
- 5.3. monitoring and recording of cash transfers and promissory notes transfers to implementing agencies or reservation of promissory notes for implementing agencies and any subsequent promissory notes encashments following approvals by the Executive Committee from inception to date for inclusion in the reports on the status of the Fund;
- 5.4. monitoring and recording of commitments and expenditures of the Multilateral Fund Secretariat following approvals of the Executive Committee from inception to date for inclusion in the reports on the status of the Fund; and
- 5.5. preparing the aggregate report on the status of the Fund for the Executive Committee's meetings giving the pertinent information on all elements of income and expenditures/disbursements/commitments and the balance available for new approvals.

6. Multilateral Fund financial reports:

- 6.1. preparation of the cumulative financial reports, including the statement of income and expenditure, and the report on changes in reserve and fund balance and cumulative fund balance;
- 6.2. preparation of the annual financial reports, including the statements of income and expenditure, and the report on changes in reserve and fund balance and cumulative fund balance;
- 6.3. preparation of the implementing agencies' summarized/aggregated expenditures reports annually and cumulatively; and
- 6.4. preparation of the Multilateral Fund Secretariat's reports on the annual expenditures vis-à-vis the approvals by the Executive Committee.

7. Reconciliation of the Treasurer's accounts with bilateral and implementing agencies and the Multilateral Fund Secretariat:

- 7.1. reconciliation of approvals by the Executive Committee, taking into account funds returned from completed projects, cancelled projects and adjustments to approvals, including projects transferred from one implementing agency to another;
- 7.2. reconciliation of cash resources transferred by the Treasurer and received by the implementing agencies;
- 7.3. reconciliation of promissory notes transferred to the World Bank considering the actual amounts realized in encashments;
- 7.4. reconciliation of reported interest income earned by implementing agencies and approvals granted by the Executive Committee to the agencies; and
- 7.5. reconciliation of adjustments to the bilateral cooperation assistance to Parties as per annual implementation progress reports made to the Executive Committee through the Multilateral Fund Secretariat and approvals granted by the Executive Committee.
