

09 AUG. 2012

## **AGREEMENT**

between

**THE FINANCIAL MECHANISM OFFICE**  
**European Free Trade Association**  
**Rue Joseph II 12-16**  
**B-1000 Brussels**  
**Belgium**

hereinafter referred to as "FMO"

and

**THE OPEN ESTONIA FOUNDATION**  
**Estonia pst 5.a**  
**10143 Tallinn**  
**Estonia**  
**Registration number: 90000334**

hereinafter referred to as the "Fund Operator"

together hereinafter referred to as the "Parties"

on the

**IMPLEMENTATION**  
**of the**  
**NGO PROGRAMME IN ESTONIA**

hereinafter referred to as the "Programme"

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## **Chapter 1: General provisions**

### **1.1 Scope**

The Programme is part of the implementation of the EEA Financial Mechanism 2009-2014. The total budget of the Programme is EUR 2,300,000 including the management fee. This Agreement, as well as its annexes, lay down the rights and obligations of the Parties regarding the implementation of the Programme.

### **1.2 Co-operation**

1. The Parties shall take all appropriate and necessary measures to ensure fulfilment of the obligations and objectives arising out of the Agreement.
2. The Parties agree to provide all information necessary for the good functioning of the Agreement and to apply the highest degree of transparency and accountability as well as the principles of good governance, sustainable development, gender equality and equal opportunities.
3. All communication between the Parties shall be in English.
4. The Parties shall promptly inform each other of any circumstances that interfere or threaten to interfere with the successful implementation of the Programme.

### **1.3 Management fee**

The management fee provided to the Fund Operator shall be EUR 299,000. This amount is without VAT. The FMO will provide a certificate proving that the European Free Trade Association (of which the FMO is administratively a part) is exempt from paying VAT.

### **1.4 Programme preparation costs**

1. Costs up to EUR 3,800 incurred by the Fund Operator for the finalisation of the programme proposal may be eligible.
2. The first date of eligibility of costs under this Article is 15 March 2012. The last date of eligibility is 15 June 2012.
3. Programme preparation costs shall be claimed in the first interim report.

### **1.5 Operational Period**

The Programme shall operate from the signing of this Agreement until 30 April 2017. Changes to this operational period can be agreed upon between the Parties.

### **1.6 Status and hierarchy of documents**

1. The provisions in this Agreement shall be supplemented by the provisions of the following annexes:
  - a) Terms of Reference (Annex 1)
  - b) the Bid, including all subsequent correspondence and communication between the Financial Mechanism Office and the Fund Operator (Annex 2)
  - c) time line and budget (Annex 3)
  - d) expected outcomes, outputs, indicators (Annex 4)
2. In case of inconsistencies between the Agreement and its annexes, the Agreement shall have priority. In case of inconsistencies between Annex 1 and Annex 2, Annex 1 shall have priority unless the deviation is explicitly approved by the FMO and outlined in this Article. In case of inconsistencies between Annex 2 and Annex 3, Annex 3 shall have priority. In case of inconsistencies between Annex 2 and Annex 4, Annex 4 shall have priority.

### **1.7 Bank guarantee**

1. The Fund Operator shall, no later than 20 working days after the signing of this Agreement, ensure that the FMO has been provided with a valid bank guarantee directly from the guarantor that is identical in substance to a template provided by the FMO with the ToR to be called on in case of non-compliance of this Agreement. The amount of the guarantee shall be EUR 38,200. The bank guarantee shall remain in effect at least until the FMO has approved the final programme report referred to in Article 6.5. The validity of the bank guarantee shall automatically be extended, but not beyond 30 April 2018, if:
  - a) a dispute arises between the Fund Operator and the FMO; the bank guarantee shall be extended until such a dispute has been settled;
  - b) the calculation of the final balance shows that the Fund Operator owes funds to the FMO; the bank guarantee shall be extended until such funds have been reimbursed to the FMO, or
  - c) the approval of the final programme report is dependent upon such an extension, for example due to unresolved irregularity in a project.
2. If the amount potentially owed to the FMO is lower than the amount of the bank guarantee, the

amount of the latter may be reduced. The FMO shall notify the guarantor of such a reduction and set the new amount of the bank guarantee.

3. The cost of the bank guarantee is included in the management fee referred to in Article 1.3.

## **Chapter 2: Main responsibilities of the Parties**

### **2.1 Main responsibilities of the Fund Operator**

1. The Fund Operator is responsible for the development and implementation of the Programme. This includes:

- a) the setting up of appropriate management and control systems;
- b) the implementation of proportionate requirements in management, reporting and control;
- c) ensuring that projects contribute to the overall objectives of the EEA Financial Mechanism 2009-2014 and the specific programme outcomes and objectives;
- d) ensuring that the Programme takes into account the objectives of the EU Strategy for the Baltic Sea Region;
- e) considering synergies with other EEA and Norway Grants Programmes in Estonia, with an emphasis on NGO support under the Programme "Domestic and Gender-based Violence";
- f) the organisation of open call(s) for proposals that take into account the specific needs of the sector in terms of geographical spread, capacity etc. and propose adequate application forms, procedures and support which will cater for different needs within the sector;
- g) the development of tools and procedures for the project application and selection phase;
- h) the setting up of a group of independent experts and Selection Committee(s) that shall recommend the projects to be funded within the Programme;
- i) the notification of approval / rejection decisions to applicants;
- j) the conclusion of project contracts with project promoters;
- k) the development and implementation of capacity-building, mentoring, support and learning transfer opportunities and tools for applicants and project promoters throughout the application and project cycle in connection with the identified overall objective and expected outcomes.

This includes but is not limited to, responding to questions from potential applicants, conducting seminars / workshops for NGOs and publishing instructions and guidelines for applicants; proposing activities that benefit and enhance the capacity of NGOs to engage, promote participation and increase their fundraising potential. The budget line dedicated to activities under this subparagraph shall be used exclusively for this purpose;

- l) prepare and submit reports to the FMO on the implementation of the Programme and ensuring reporting from project promoters;
- m) conducting regular monitoring based on risk assessment and random samples;
- n) establishing measures to prevent, detect and nullify suspected or actual cases of irregularities;
- o) the assurance of visibility and publicity measures which reach out to the sector in accordance with Chapter 10 of this Agreement;
- p) establishing and maintaining a separate interest-bearing bank account dedicated to the funds intended for regranting. Any interests earned on this bank account shall be accounted for and transferred to the FMO at the completion of the Programme. The funds kept on this account shall be considered the property of the FMO until they have been transferred to the project promoters. These funds can not be used for any other purposes.
- q) the transfer of funds to project promoters and the verifiable management of the funds, including financial accounting, verification of financial documents and payment requests, as well as audits and on-the-spot checks;
- r) ensure financial flows and fund transfers that will not put projects at risk and ensure adequate financial control;
- s) the collection and review of project implementation and completion reports;
- t) the archiving of all documents relevant to the implementation of the Programme;
- u) facilitate and encourage bilateral exchange at programme and project level which will be mutually beneficial and

contribute to the objective of the Programme;

- v) define administrative procedures and manage the funds for bilateral relations at programme level in a way that will facilitate such exchanges;
- w) the implementation of complementary actions that positively benefit the Programme as a whole.

2. The Fund Operator shall within one month of the signing of this Agreement fill in the programme proposal template on the FMO's web-based documentation, reporting and information system.

3. The Fund Operator shall perform the services under this Agreement with due care, efficiency and diligence, in accordance with the best professional practice.

## 2.2 Main responsibilities of the FMO

1. The FMO shall pay the management fee in instalments as follows:

- a) EUR 29,136 fourteen days after the bank guarantee referred to in Article 1.7 has been received and found satisfactory by the FMO, provided that the programme proposal template referred to in Article 2.1.2 has been correctly filled in;
- b) in accordance with invoices submitted with the interim financial reports referred to in Article 6.2, at the payment days referred to in Article 6.2.3, unless the report has not been approved.
- c) 10 percent of payments due according to subparagraphs (a) and (b) may be retained until the FMO has approved the final programme report submitted by the Fund Operator to the FMO. The FMO shall transfer the retained amount to the Fund Operator in accordance with Article 6.5.5.

2. The FMO shall transfer the funds for regranting to the Fund Operator in accordance with interim financial reports referred to in Article 6.2, unless the report has not been approved.

3. Funds for regranting within the bilateral fund referred to in Article 4.1 and for complementary action referred to in Article 4.2 shall be transferred as follows:

- a) EUR 10,000 fourteen days after the bank guarantee referred to in Article 1.7 has been received and found satisfactory by the FMO, provided that the programme proposal template referred to in Article 2.1.2 has been correctly filled in;

- b) In accordance with interim financial reports referred to in Article 6.2, unless the report has not been approved.

## **Chapter 3: Description of NGO projects**

### 3.1 Areas of support

- a) Democratic values, including human rights promoted
- b) Advocacy and watchdog role developed
- c) Strengthened capacity of NGOs and an enabling environment for the sector promoted

### 3.2 Eligible activities

Eligible activities are in line with section 2.6 of the ToR and shall include in particular, under each of the outcomes, the following:

- a) value development, awareness raising, active participation, empowerment of NGOs, multicultural dialogue and integration of groups at risk of exclusion;
- b) partnership development between NGOs and government institutions, raising NGO capacity to advocate and act as a critical watchdog;
- c) raising financial capacity, strengthening governance in membership NGOs, including minority NGOs, exchange of experiences and activities for developing human capital in third sector, support to service provision.

### 3.3 Eligible applicants

1. Eligible applicants are NGOs that are established in Estonia and fall within the following definition: "A non-profit voluntary organisation established as a legal entity, having a non-commercial purpose, independent of local, regional and central government, public entities, political parties and commercial organisations. Religious institutions and political parties are not considered NGOs."

2. The Fund Operator shall, for the purpose of interpreting the definition in paragraph 1, duly take into account the interpretation guidance contained in section 4.2 of the ToR. In cases of doubt, the Fund Operator shall consult with the FMO.

### 3.4 General principles on the eligibility of costs in projects

1. Eligible expenditures of projects are those actually incurred by the project promoter or the project partner, which meet the following criteria:

- a) they are incurred between the first and final dates of eligibility of a project as specified in the project contract;
- b) they are connected with the subject of the project contract and they are indicated in the estimated overall budget of the project;
- c) they are proportionate and necessary for the implementation of the project;
- d) they must be used for the sole purpose of achieving the objective(s) of the project and its expected outcome(s), in a manner consistent with the principles of economy, efficiency and effectiveness;
- e) they are identifiable and verifiable, in particular through being recorded in the accounting records of the project promoter and determined according to the applicable accounting standards and generally accepted accounting principles; and
- f) they comply with the requirements of applicable tax and social legislation.

2. Expenditures are considered to have been incurred when the cost has been invoiced, paid and the subject matter delivered (in case of goods) or performed (in case of services and works). Exceptionally, costs in respect of which an invoice has been issued in the final three month of eligibility are also deemed to be incurred within the dates of eligibility if the costs are paid within 30 days of the final date of eligibility. Overheads and depreciation of equipment are considered to have been incurred when they are recorded on the accounts of the project promoter.

3. The project promoter's internal accounting and auditing procedures must permit direct reconciliation of the expenditures and revenue declared in respect of the project with the corresponding accounting statements and supporting documents.

### 3.5 Direct expenditures

1. The eligible direct expenditures for a project are those expenditures which are identified by the project promoter or the project partner, in accordance with their accounting principles and usual internal rules, as specific expenditures directly linked to the implementation of the project and which can therefore be booked to it directly. In particular, the following direct expenditures may be eligible provided that they satisfy the criteria set out in Article 3.4:

- a) the cost of staff assigned to the project, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this corresponds to the project promoter's and project partner's usual policy on remuneration;
- b) travel and subsistence allowances for staff taking part in the project, provided that they are in line with the project promoter's and project partner's usual practices on travel costs and are within the scales set by the Fund Operator ;
- c) cost of new or second hand equipment, provided that it does not exceed 20% of the eligible direct cost of the project and that it is depreciated in accordance with generally accepted accounting principles applicable to the project promoter and generally accepted for items of the same kind. Only the portion of the depreciation corresponding to the duration of the project and the rate of actual use for the purposes of the project may be taken into account by the Fund Operator, except in the following cases, provided such exceptions are in compliance with the applicable rules on state aid:
  - The full purchase cost of equipment under small capacity building projects may be eligible, provided that a reasonable justification is provided by the project promoters in the project applications;
- d) costs of consumables and supplies, provided that they are identifiable and assigned to the project;
- e) costs entailed by other contracts awarded by a project promoter for the purposes of carrying out the project, provided that the awarding complies with the applicable rules on public procurement and this Regulation; and
- f) costs arising directly from requirements imposed by the project contract for each project (e.g. dissemination of information, specific evaluation of the action, audits, translations, reproduction), including the costs of any financial services (especially the cost of financial guarantees).

2. Costs related to reconstruction, renovation, or refurbishment of a real estate shall not exceed 20% of the eligible direct cost of the project.

### 3.6 Indirect costs

1. Indirect costs are all eligible costs that cannot be identified by the project promoter or the project partner as being directly attributed to the project but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the project. They may not include any eligible direct costs. Indirect costs of the project shall represent a fair apportionment of the overall overheads of the project promoter or the project partner. They may be identified according to either of the following methods:

- a) based on actual indirect costs for those project promoters and project partners that have an analytical accounting system to identify their indirect costs as indicated above, or
- b) a project promoter and project partners may opt for a flat rate of up to 15% of its total direct eligible costs, excluding its direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the project promoter.

2. The Fund Operator's guidelines for applicants shall contain provisions on the calculation of the flat rate that ensure the fair apportionment of the overall overheads of the project promoters and/or the project partners. The flat rate may vary between different categories of projects.

### 3.7 Excluded costs

1. The following costs shall not be considered eligible:

- a) interest on debt, debt service charges and late payment charges;
- b) charges for financial transactions and other purely financial costs, except costs related to accounts required by the FMO or the Fund Operator;
- c) costs related to purchase of land or real estate;
- d) provisions for losses or potential future liabilities;
- e) exchange losses;
- f) recoverable VAT;
- g) costs that are covered by other sources;
- h) fines, penalties and costs of litigation; and
- i) excessive or reckless expenditure.

### 3.8 Description of eligible costs

The Fund Operator shall develop a detailed description of eligible costs and make it available on its website no later than at the opening of the first call. The description shall be in compliance with this Agreement, in particular Articles 3.4 through 3.7.

### 3.9 Minimum and maximum grant amount per project:

1. The minimum and maximum grant amount for projects shall be as follows:

- a) network projects: minimum EUR 75,000, maximum EUR 100,000
- b) large-scale projects: minimum EUR 25,000, maximum EUR 40,000
- c) small capacity building projects: minimum EUR 5,000, maximum EUR 7,500.

### 3.10 Duration of projects:

1. The maximum duration of projects shall be as follows:

- a) network projects: up to 24 months
  - b) large-scale projects: up to 18 months
  - c) small capacity building projects: up to 9 months.
2. The duration shall be counted from the date of signing of the project contract.

### 3.11 Grant rate and co-financing

1. The Programme can provide up to 90 percent of the eligible cost of the NGO project. The applicant shall provide or obtain the remaining co-financing in the form of cash or in-kind contribution as voluntary work. The in-kind contribution may constitute up to 50% of the co-financing required by the Programme for the project.

2. For the calculation of the in-kind contribution, the price for each hour of voluntary work shall be in accordance with salary normally paid for such work in Estonia and shall be calculated according to officially available statistics. The Parties to this Agreement may agree to adjust these prices during the implementation of the Programme in order to take into account changes in salaries.

### 3.12 First and final dates of eligibility

Costs within projects may be eligible from the date on which the grant is awarded or at a later date set in the project contract. The project contract shall set the final date of eligibility of costs which shall be no later than 30 April 2016. Costs incurred after that date are not eligible.

## **Chapter 4: Funds for bilateral relations and complementary action**

### **4.1 Funds for bilateral relations**

1. The Fund Operator shall set aside a minimum of 1.5% of the eligible expenditure of the programme budget for a fund to facilitate:

- (a) the search for partners for donor partnership projects prior to or during the preparation of a project application, the development of such partnerships and the preparation of an application for a donor partnership project; and/or
- (b) networking, exchange, sharing and transfer of knowledge, technology, experience and best practice between Project Promoters and entities in the Donor States.

2. The following categories of expenditure are eligible for the fund referred to in paragraph 1:

- a) fees and travel costs for participation in conferences, seminars, courses, meetings and workshops;
- b) travel costs for study trips;
- c) travel and salary costs for visits by experts;
- d) costs related to feasibility studies and preparation of financial and economic analysis;
- e) costs of conferences, seminars, courses, meetings and workshops;
- f) purchase of data necessary for the preparation of the application; and
- g) external consultancy fees.

3. Travel costs according to paragraph 2 include subsistence allowance in accordance with Article 3.5.1(b).

4. The applicable rules on state aid and public procurement shall be complied with.

5. Open calls for activities referred to in paragraph 1 shall be launched at least 6 weeks prior to the deadline for project applications. The calls shall be published on the website of the Fund Operator. The maximum grant amount per project is EUR 1,000, which may cover up to 100 percent of the costs. Applications will be assessed by the Fund Operator and decisions shall be communicated to the applicants within two weeks from the application.

### **4.2 Complementary action**

1. Complementary action consists of activities that are organised by the Fund Operator and contribute to the objective(s) of the Programme with the primary aim of:

- a) strengthening co-operation between the Fund Operator and similar entities within the Beneficiary States and Donor States; and
- b) exchanging experiences and best practices related to the implementation of the Programme.

2. The Fund Operator will undertake the following activities:

- a) organisation of a meeting in 2013 on the issue of accountability and legitimacy, including an open workshop with Estonian civil society organisations;
- b) participation in meetings with other Operators;
- c) participation in and/or appointing other organisations to attend EEA grants events and activities, including with the Council of Europe.

3. Costs of complementary action shall be in accordance with the budget (Annex 3) and not exceed EUR 37,200.

## **Chapter 5: Selection of NGO projects and contracting**

### **5.1 Open calls and availability of funds**

1. Calls for project proposals shall take into account the principles outlined in section 4.1 of the ToR and, as a minimum, comply with the following:

- a) they shall be widely publicised with a view to reach all potential applicants. The national, regional and local media, as well as specialised publications and web based tools shall be used as relevant;
- b) they shall include a clear and reasonable deadline, which shall be at least two months from the date of the publication of the announcement, and an address for submission. The announcement shall specify the hour when the call expires, whether the deadline refers to a post stamp or actual delivery time to the office of the Fund Operator and the permissible method(s) of delivery. The announcement must specify whether one or more copies of the application are required;
- c) they shall clearly specify the eligible applicants and any restrictions, limitations or exclusions that they may be subject to;
- d) they shall contain detailed selection criteria as well as a scoring chart;



- e) they shall clearly address what kind of activities and expenditure are eligible;
- f) they shall provide a description of the selection process and the decision-making structure;
- g) they shall provide a clear reference or a link to the application form and user guide;
- h) they shall clearly state the total amount available through the call, as well as the minimum and maximum amount of each project grant;
- i) they shall contain provisions on the payment model;
- j) they shall clearly state the co-financing requirements;
- k) they shall provide clear references to further information and documentation prepared by the Fund Operator that is relevant to the call; and
- l) they shall provide contact information for queries and the timeframe for answering such queries.

2. The call shall be published on the website of the Fund Operator in the national language(s) and in English.

3. The FMO and the National Focal Point shall be informed of all calls for proposals at least two weeks in advance of their announcement, and, at the same time, be provided with an English translation of the text of each call.

4. The Fund Operator shall develop a simple and user-friendly application form, complemented by a short user guide on how to make a successful application and what type of information should be included in each section of the application form. The application form and the user guide shall be available no later than on the date of the open call.

5. Social sustainability and issues related to supporting initiatives to help combat discrimination and intolerance (including anti-semitism) shall be reflected in the content and assessment criteria of the calls.

#### 5.2 Number and type of open calls and budgetary breakdown

1. There shall be five open calls for proposals during the implementation of the Programme. The open call schedule is as follows:

- a) network and large-scale projects: there will be one call in September 2012, and one call in September 2013;

- b) small capacity building projects: there will be one call in October 2012, one call in October 2013 and one call in the fall 2014.

2. The calls for proposals shall be open for at least 60 days.

3. The provisional budgetary breakdown between calls shall be as follows:

- Network and large-scale projects (first call): EUR 725,000;
- Network and large-scale projects (second call): EUR 725,000;
- Small capacity building projects (first call): EUR 137,500;
- Small capacity building projects (second call): EUR 137,500;
- Small capacity building projects (third call): EUR 137,000.

Funds may be reallocated between grant types depending on demand.

#### 5.3 Selection Committee

1. The Fund Operator shall establish one Selection Committee(s). The role of the Selection Committee is to recommend to the Fund Operator which projects should be funded. The Selection Committee shall consist of at least three persons possessing the relevant sector expertise and experience of working on or with civil society. At least one of them shall be external to the Fund Operator. The chairman of the Selection Committee shall be appointed among the Board members of the Fund Operator. The Fund Operator shall communicate the chairman's identity to the FMO within two weeks of the signing of this agreement.

2. The FMC and the National Focal Point in Estonia shall be invited to participate in the meetings of the Selection Committee as observers.

3. The Selection Committee shall keep minutes of its meetings. The Fund Operator shall provide the FMO with a copy of the minutes in English no later than two weeks after each meeting.

4. The Selection Committee shall operate in an open, transparent and accountable manner, and its composition must ensure that due attention is paid to possible areas of conflict of interest.

#### 5.4 Selection procedures:

1. The Fund Operator shall review the applications for compliance with administrative and eligibility criteria. Applicants whose applications are rejected at this stage shall be informed and given a reasonable time to appeal that decision.

2. Each application that meets the administrative and eligibility criteria shall be reviewed by two independent and impartial experts appointed by the Fund Operator. Costs related to experts shall be covered from the management cost of the Fund Operator.

3. The experts shall separately and independently score the project according to the selection criteria published with the call for proposals. The experts shall justify in writing the scores for each criterion they evaluate. For the purposes of ranking the projects, the average of the scores awarded by the experts shall be used.

4. If the difference between the scores given by the two experts is more than 30% of the higher score, a third expert shall be commissioned by the Fund Operator to score the project independently. In such cases the average score of the two closest scores shall be used for the ranking of the projects.

5. The Fund Operator shall provide the Selection Committee with a list of projects ranked in accordance with paragraphs 3 and 4 without making any changes to the ranking or the scoring awarded by the experts. It shall at the same time provide the FMO with the ranked list in English. The Selection Committee shall review the ranked list of projects. It may modify the ranking of the projects in justified cases. The justification for the modifications shall be detailed in the minutes of the meeting of the Selection Committee. If such a modification results in a rejection of a project that without the modification would have been approved, the affected applicant and the FMO shall be informed in writing about the justification for the modification. The Selection Committee shall submit the list of recommended projects to the Fund Operator.

6. The Fund Operator shall verify that the selection process has been conducted in accordance with this Agreement and that the recommendations from the Selection Committee comply with the rules and objectives of the Programme. Following such verification the Fund Operator shall, based on the decision of the Selection Committee, make a decision on which projects shall be supported. The Fund Operator may modify the decision of the Selection Committee in justified cases. If such a modification results in a rejection of a project that without the modification would have been approved, the affected applicant and the FMO shall be informed in writing about the justification for the modification.

7. Decisions taken by the Fund Operator in relation to the selection process shall be taken by the Board of the Fund Operator. The decisions shall be documented, in particular if the decision does not

fully reflect the recommendations of the Selection Committee. The Fund Operator shall notify the applicants about the results of the selection process within a reasonable time and publicise the results.

8. The Fund Operator shall store all documents related to the selection procedures for at least three years following the approval of the final programme report by the FMO.

9. Without prejudice to the importance of other obligations of the Fund Operator, a non-compliance with this Article constitutes a serious breach of this Agreement.

#### 5.5 Conflict of interest in the selection process

1. Conflict of interest is deemed to be present when a person involved in the selection process (e.g. independent experts, members of Selection Committees, staff involved in review of compliance with administrative and eligibility criteria or decision makers for the Fund Operator) has direct or indirect interests that are or appear to be incompatible with the impartial and/or objective exercise of the functions related to the selection process. Such interests may be related to economic interests, political or national affinities, family or emotional ties, any other relevant connection or shared interests with the applicant or its partner, or any other interests liable to influence the impartial and objective performance of the person involved in the selection of projects.

2. A person who has direct or indirect interests as referred to in paragraph 1 shall not be involved in the selection process if these interests relate to any project application that is being considered. If the conflict of interest applies only to one particular call, that person's involvement in a later call could be considered if the project that caused the conflict of interest has not been selected for funding.

3. The Fund Operator shall take every reasonable measure to prevent conflict of interest from occurring. This includes ensuring that any person involved in the selection process signs a declaration of no conflict of interest and declares that if he later becomes aware of a risk of conflict of interest he or she will notify the Fund Operator immediately. If conflict of interest nevertheless arises, the Fund Operator shall, in consultation with the FMO, take all the necessary measures to prevent that such a situation affects the integrity of the selection process. Such measures may include re-appraising projects.

#### 5.6. Project contract

1. For each approved NGO project a project contract shall be concluded between the Fund Operator and the project promoter.

2. The project contract sets out the terms and conditions of grant assistance as well as the roles and responsibilities of the parties. It shall in particular include provisions that ensure that the project promoter takes on any obligations that are necessary for the Fund Operator to comply with its obligations under this Agreement. The project contract shall contain, as a minimum, provisions on the following:

- a) obligations regarding reporting that enables the Fund Operator to comply with its reporting obligations to the FMO and the National Focal Point;
- b) the maximum amount of the project grant in euro and the maximum project grant rate;
- c) the eligibility of expenditures;
- d) the method of calculating indirect costs and its maximum amount;
- e) the first and final dates of eligibility of expenditures;
- f) modifications of the project;
- g) provisions that ensure that the access requested in relation to monitoring, audits and evaluations is provided without delay;
- h) provisions that ensure that obligations regarding publicity are complied with;
- i) the right of the Fund Operator to suspend payments and request reimbursement from the project promoter in case decision on such actions is taken by the FMO and/or the Fund Operator;
- j) resolution of disputes and jurisdiction;
- k) waiver of responsibility referred to in Article 13.3;
- l) a detailed budget, with itemised costs and unit prices, and which may allow for up to 5% contingency; and
- m) a reference to partnership agreements or letters of intent, if relevant.

3. The obligations of the project promoter under the project contract shall be valid and enforceable under the applicable national law of Estonia.

4. The Fund Operator may request the FMO to confirm that the project contract template complies with the minimum standards set in paragraph 2 of this Article.

5. Confirmation according to paragraph 4 is strictly limited to declaring that the obligation under paragraph 2 is met and shall neither be construed to imply any opinion or guarantees on the completeness, validity or enforceability of the project contract, nor result in any responsibility by the FMO for any deficiencies, incompleteness or inaccuracies of the project contract.

#### 5.7 Project partners and partnership agreements

1. A project partner is a public or private entity, commercial or non-commercial, as well as non-governmental organisations, all of whose primary locations are either in the Donor States, Beneficiary States of the EEA Financial Mechanism 2009-2014, or a country outside the European Economic Area that has a common border with the respective Beneficiary State, or any inter-governmental organisation, actively involved in, and effectively contributing to, the implementation of a project. It shares with the project promoter a common economic or social goal which is to be realised through the implementation of the project.

2. A project may be implemented in partnership with project partners. If a project is implemented in such a partnership, the project promoter shall sign a partnership agreement with each of the project partners.

3. The partnership agreement shall contain the following provisions on the roles and responsibilities of the parties:

- a) provisions on the financial arrangements between the parties, including, but not limited to, which expenditure the project partners can get reimbursed from the project budget;
- b) currency exchange rules for such expenditure and its reimbursement;
- c) provisions on the method of calculating indirect costs and their maximum amount;
- d) provisions on audits of the project partners;
- e) a detailed budget, with itemised costs and unit prices; and
- f) provisions on dispute resolution and jurisdiction.

4. The partnership agreement shall be in English if one of the parties to the agreement is an entity from the Donor States.

5. The eligibility of expenditures incurred by a project partner is subject to the same limitations

as would apply if the expenditures were incurred by the project promoter.

6. The creation and implementation of the relationship between the project promoter and the project partner shall comply with the applicable national and European Union law on public procurement as well as Article 5.9 of this Agreement.

7. The partnership agreement shall be submitted to the Fund Operator before the signing of the project contract. The Fund Operator shall verify that the partnership agreement complies with this Article.

#### 5.8 Grant awarding and reallocation of funds

1. Project grants that have upon project closure not been fully utilised, as well as project grants that have been cancelled due to irregularities or for other reasons, may be reallocated to future calls for proposals or to additional activities of already approved projects, provided that these additional activities contribute to the objectives of the projects receiving the additional funds.

2. Any decision to reallocate project grants to already approved projects shall be based on recommendations by the Selection Committee. The Selection Committee shall base its recommendations on transparent and objective criteria. By applying these criteria, the Selection Committee shall ensure equal treatment of all project promoters but may in justified cases give priority to:

- a) certain geographical regions lagging behind; and
- b) a clearly defined group of less privileged project promoters.

3. The criteria shall be made available on the website of the Fund Operator no later than one month prior to any decision to reallocate funds according to paragraph 2. Project promoters shall be informed in writing without delay when such criteria have been published on the website.

#### 5.9 Procurement

1. National and European Union law on public procurement shall be complied with at any level in the implementation of the Programme and its projects.

2. Notwithstanding provisions of national law that exempt NGOs from public procurement, any procurement procedures related to amounts above the European Union thresholds for procurement shall be undertaken in accordance

with the applicable laws on procurement without regard for such an exemption.

3. In cases where contracts concluded as part of the implementation of the Programme fall below the national or European Union thresholds set for public procurement or outside the scope of the applicable public procurement laws, the awarding of such contracts (including the procedures prior to the awarding) and the terms and conditions of such contracts shall comply with best economic practices, including accountability, allow a full and fair competition between potential providers, for example by way of effective price comparison, and ensure the optimal use of resources from the EEA Financial Mechanism 2009-2014. To this end, and in the absence of stricter national laws, in cases of procurement related to an amount of EUR 5,000 or higher but below the relevant European Union thresholds, the project promoter shall invite at least three suppliers/service providers to submit offers.

4. The highest ethical standards shall be observed during the procurement and execution of contracts. The Fund Operator shall ensure the application of adequate and effective means to prevent illegal or corrupt practices. No offer, gifts, payments or benefit of any kind, which would or could, either directly or indirectly, be construed as an illegal or corrupt practice, e.g. as an inducement or reward for the award or execution of procurement contracts, shall be accepted.

5. The Fund Operator shall ensure that records of the awarding and execution of contracts are kept for at least three years from the closure of the Programme and provided upon request to the FMO.

#### 5.10 Pre-defined projects

1. The following pre-defined project will be implemented within the Programme: "Development programme for public benefit NGOs".

2. The Project focuses on support and mentoring towards capacity building of NGOs. The project budget is EUR 48,000. The Project Promoter is the Network of Estonian Not-for Profit Organisations (NENO). Further information on this project is provided in Annex 2.

### **Chapter 6: Reporting from the Fund Operator to the FMO and review meetings**

#### 6.1 Annual programme reports

1. The Fund Operator shall submit an annual programme report to the FMO and the National

Focal Point in a format provided by the FMO. The purpose of the report is to describe:

- a) the progress in implementing the Programme compared to the plans set out in this Agreement and/or the preceding annual programme report and in achieving the expected outputs;
- b) the Programme's contribution to its overall objective and outcomes;
- c) specific details of challenges to implementation and plans to overcome such challenges, including any changes to risk mitigation measures and financial plans; and
- d) a summary listing of irregularities and of the measures taken to remedy these.

2. The reporting periods for the annual programme reports shall be the calendar year. The report shall be submitted not later than 15 February each year. The first annual programme report shall be submitted on 15 February 2013.

#### 6.2 Interim financial reports

1. There shall be three reporting periods in each calendar year for the interim financial reports. They are:

- a) 1 January – 30 April;
- b) 1 May – 31 August; and
- c) 1 September – 31 December.

2. Interim payments shall be paid based on an interim financial report submitted by the Fund Operator in a format provided by the FMO.

3. Interim payments from the FMO shall be made on the following payment dates: 15 April, 15 August and 15 December. Should a payment date land on a weekend or an EFTA public holiday, the payment shall be made on the next EFTA working day.

4. Interim financial reports shall be received by the FMO according to the following schedule:

- a) on, or before, 15 March for payments to be made on 15 April;
- b) on, or before, 15 July for payments to be made on 15 August;
- c) on, or before, 15 November for payments to be made on 15 December.

5. Payment based on an interim financial report received after its due date but on, or before, the following due date referred to in paragraph 4 shall be due as the report would have been received on its following due date.

6. Interim financial reports shall include:

- a) a statement of actual expenditure incurred during the reporting period preceding the payment date; and
- b) a statement of proposed expenditure for the reporting period immediately following the payment date.

7. The actual incurred expenditure for the last reporting period shall be reported in the final programme report.

8. When the interim financial report has been provided, the FMO shall verify that it is in the correct form and that the conditions for payment have been met. If that verification is positive, interim payments shall be transferred no later than on the payment dates referred to in paragraph 3.

9. Interim payments shall in principle consist of the proposed expenditure for the following reporting period less the difference between the proposed expenditure for the previous reporting period and actual expenditure in that period, taking into account any justified unplanned expenditure in the reporting period within which the interim financial report is submitted. The FMO may modify the amount of the interim payment if the proposed expenditures are considered to be unjustified. The FMO shall provide the Fund Operator with a justification of the modification without delay.

10. Should verification according to paragraph 8 be negative, the FMO and the Fund Operator shall closely cooperate to remedy the deficiencies. The FMO may provisionally hold interim payments until such deficiencies have been remedied. When the FMO, after receiving all necessary information, has positively verified interim financial report, it shall release the payment due as soon as possible.

#### 6.3 Forecast of likely payment applications

At the latest by 20 February, 20 May, 20 September and 10 December each year, the Fund Operator shall send to the FMO, in a format provided by the FMO, a justified forecast of likely payment applications from the Fund Operator for the remainder of the current financial year and subsequent financial years.

#### 6.4 Summary reports and statistical reports after each call

1. The Fund Operator shall no later than one week after the closing of each call provide the FMO with a list of all applications received. The list shall include the name of the applicants, grant amount applied for, name and nationality of partner(s) if any, and the thematic area.

2. The Fund Operator shall submit a statistical report in a format provided by the FMO within one week from the date when 90 percent of the project contracts have been signed. The Fund Operator shall send an updated statistical report to the FMO when all project contracts for that call have been signed.

#### 6.5 Final programme report

1. The Fund Operator shall submit a final programme report to the FMO and the National Focal Point in a format provided by the FMO. The purpose of the report is to provide:

- a) an overall assessment of the implementation of the Programme, including comparison to the plans set out in the programme proposal and any lessons learned;
- b) an assessment of the Programme's contribution to its overall objective and outcomes upon completion of all projects and the closure of the Programme;
- c) overview of irregularities and measures taken to remedy these;
- d) specific details in respect of meeting and/or adapting financial plans; and
- e) financial information, including a calculation of the final balance.

2. The final programme report shall include financial and statistical annexes in formats provided by the FMO.

3. The final programme report shall be forwarded to the FMO within three months of the completion of the last project under the Programme, and not later than 30 April 2017.

4. The FMO shall approve the final programme report no later than two months following the receipt of the report and all relevant documents and necessary information.

5. Any final balance payable to the Fund Operator shall be transferred by the FMO no later than one month after FMO's approval of the final programme report. Any final balance payable to the FMO shall be reimbursed to the FMO within the same deadline.

#### 6.6 Review meetings

The Parties to the Agreement shall meet at least once a year to review the implementation of the Programme. The meetings shall take place in Estonia unless the Parties agree on another venue. Topics covered shall include the selection and implementation of projects, bilateral relations,

complementary actions, capacity building, summaries of audit and monitoring reports, publicity of the Programmes, irregularities and steps taken to remedy them, and the Fund Operator's qualitative assessment of the achievements of the Programme.

### **Chapter 7: Reporting from project promoters, financial flows, audits and monitoring**

#### 7.1 Reporting

1. The Fund Operator shall establish a system for reporting by project promoters that provides the Fund Operator with sufficient information for its reports to the FMO, in particular in relation to progress towards objective and outcomes as well as statistical information.

2. Project promoters shall submit to the Fund Operator interim and final reports containing information on project progress, incurred expenditure and advance payment requests.

3. The interim reports shall as a minimum contain information on achievements in meeting the objectives, risk control, self-evaluation of the project promoters and partners if applicable and challenges for the next reporting period.

4. Interim reports shall be submitted as follows:

- every three months for large-scale and network projects;
- once after half of the project implementation period for small capacity building projects.

5. Final reports shall be submitted within 30 days of the completion of the projects.

#### 7.2 Proof of expenditure

Costs incurred by project promoters and project partners shall be supported by receipted invoices, or alternatively by accounting documents of equivalent probative value.

#### 7.3 Verification of payment claims

1. The Fund Operator shall verify and approve the interim and final reports submitted by the projects promoters.

2. Costs incurred by the project promoters and project partners shall be certified by the Fund Operator. A report by an independent and certified auditor shall be seen as sufficient proof of costs incurred by project promoters and project partners.

#### 7.4 Payments to projects

1. Payments of the project grant to the project promoters may take the form of advance

payments, interim payments and payments of the final balance.

2. For small capacity projects, the advance payment shall amount to 75% of the project grant. The interim payment shall amount to 15% of the project grant and shall be paid after the approval of the interim report.

3. For network and large-scale projects, the advance payment shall amount to 25% of the project grant. The interim payments shall not exceed 25% of the project grant and shall be paid after the approval of the interim reports, provided that at least 50% of the previous payment has been incurred.

4. The final balance of at least 10% shall be paid after the approval of the final report.

5. The Fund Operator shall not deduct any fees or expenses of any kind from the payments to the project promoters. Transfer fees shall be paid by the Fund Operator.

#### 7.5 Audit and on-the-spot verifications

1. The Fund Operator shall undertake a full financial visiting audit of at least 10 percent of the projects.

2. The Fund Operator shall undertake a desk financial audit of at least 15 percent of the projects. All small capacity building projects shall undergo a desk audit. Network and large-scale projects shall undergo a desk audit in case of suspicion of misuse of funds.

#### 7.6 Monitoring

1. The Fund Operator shall continuously monitor projects during their implementation. The intensity of the monitoring shall be based on a random sample or a risk assessment.

2. Project Promoters shall be required to report on project progress and outputs in interim reports and at the end of the project in a final report.

3. Information regarding monitoring measures to be carried out by the Fund Operator is outlined in Annex 2.

### **Chapter 8: Responsibilities related to irregularities**

#### 8.1 Definition of irregularities

An irregularity shall mean an infringement of:

- a) this agreement;
- b) the project contract;
- c) any provision of European Union law; or

- d) any provision of the national law of Estonia,

which affects or prejudices the implementation of the Programme, for instance by unjustified or disproportionate expenditure, by affecting the integrity of the selection process, or by reducing or losing revenue under the Programme and/or the project.

2. The Fund Operator shall make every effort possible to prevent, detect, and nullify the effect of any cases of irregularities. Similarly, the Fund Operator shall investigate any suspected and actual cases of irregularities promptly and efficiently.

#### 8.2 Immediate reporting on irregularities

The Fund Operator shall immediately report to the FMO all suspected and actual cases of irregularities when any of the following applies:

- a) they involve allegations of an act or omission which constitutes a criminal offence under the national legislation of the Beneficiary State, such as corruption, fraud, bribery or embezzlement;
- b) they indicate the presence of serious mismanagement affecting the use of the financial contribution to the Programme; or
- c) they pose an immediate threat to the successful completion of any project due to the amounts in proportion to the total project cost, their gravity or any other reason.

#### 8.3 Regular reporting on irregularities

1. For irregularities other than those referred to in Article 8.2 or paragraph 5 of this Article, the Fund Operator shall within two months of the end of each quarter submit to the FMO a report, in a format provided by the FMO, describing any suspected and actual cases of irregularities discovered during that quarter.

2. Should there be no irregularities to report on during the quarter, the Fund Operator shall inform the FMO of this fact within the time limit set in paragraph 1.

3. Together with each report on new irregularities, the Fund Operator shall report to the FMO on the progress made in the investigation and remedy of previously reported irregularities.

4. Should there be no progress to report on under this Article, the Fund Operator shall inform the

FMO of this fact within the time limit set in paragraph 1.

5. Unless requested by the FMO, the following cases of irregularities need not be reported:

- a) cases where the irregularity consists solely in the failure to implement a project, in whole or in part, owing to the bankruptcy of the project promoter;
- b) cases brought to the attention of the Fund Operator by the project promoter voluntarily and before detection by the Fund Operator, whether before or after the payment of the project grant related to that irregularity;
- c) cases which are detected and corrected by the Fund Operator before any payment to the project promoter of the project grant and before inclusion of the expenditure concerned in an interim financial report or final programme report.

6. Paragraph 5 does not apply to irregularities that shall be reported immediately according to Article 8.2 or irregularities preceding a bankruptcy.

7. The Fund Operator shall keep a registry of irregularities that do not need to be reported to the FMO.

#### 8.4 Recovery of amounts subject to irregularities

1. In case of irregularities, the Fund Operator shall, taking into account the seriousness of the irregularity, determine whether to:

- a) cancel the project and request reimbursement of all or part of the already paid project grant,
- b) allow the project to continue but apply a proportionate financial correction, or
- c) take no action.

2. Before making decisions according to paragraph 1 the Fund Operator shall consult with the FMO.

3. The Fund Operator shall, on its own initiative or based on instructions by the FMO, take all reasonable measures to recover any amount unduly paid to a project promoter, including using any available judicial or administrative remedies.

4. The Fund Operator shall not be responsible for amounts that cannot be recovered in accordance with paragraph 3, if it shows that the loss of the funds and the circumstances related thereto are not due to a negligent performance or non-performance of the obligations of the Fund Operator under this Agreement.

## **Chapter 9: External monitoring, evaluation, audits and provision of information**

### 9.1 External monitoring and evaluation

Without prejudice to the monitoring carried out by the Fund Operator, the FMO may undertake external monitoring and evaluation of the Programme. The FMO shall inform the Fund Operator about such activities at least two weeks in advance.

### 9.2 Audits and on-the-spot verifications arranged by the FMO

1. The FMO may arrange audits and on-the-spot verifications of the Programme. The FMO shall, except in urgent cases, give two weeks' notice to the Fund Operator concerned before an audit or on-the-spot verification is carried out.

3. The Fund Operator shall be given an opportunity to provide comments to an audit report before it is finalised.

### 9.3 EFTA Board of Auditors

The EFTA Board of Auditors may conduct audits of the Programme and its projects. The FMO shall, as far as it is under its control, ensure that the Fund Operator is given at least two week's notice before such audit is carried out.

### 9.4 Access

The persons performing monitoring, audits or on-the-spot verifications according to this Agreement shall upon request be granted prompt, full, and unimpeded access to all information, documents, persons, locations and facilities, relevant to the audit or the verification.

### 9.5 Provision of information

The Fund Operator shall without unreasonable delay provide the FMO or any person(s) authorised by the FMO, with such information relating to the Programme as they may at any time request.

### 9.6 Records

1. The Fund Operator shall keep full accurate and systematic records and accounts in accordance with the laws of Estonia.

2. Such records must be kept for a 3-year period following FMO's approval of the final programme report. These documents comprise any documentation concerning the implementation of the Programme, with the exception of documents



solely relevant for the use of the management fee under Article 1.3.

3. The Fund Operator shall permit the FMO, or any person(s) authorised by the FMO, to inspect or audit, at any reasonable time, the records and accounts relating to the implementation of the Agreement and to make copies thereof both during and after the period of operation of the Programme.

## **Chapter 10: Publicity**

### 10.1 General provision

The publicity of the Programme shall be in accordance with the communication plan provided in the Bid (Annex 2), this Agreement and Annex 4 "Information and Publicity Requirement" to the *Regulation on the implementation of the European Economic Area Financial Mechanism 2009-2014*.

### 10.2 Website

The Fund Operator will create a website dedicated to this Programme. The website will as a minimum contain information about the Programme, the open calls (including application forms and guiding tools), and information about the projects supported under the Programme. The website will be available in Estonian and in Russian.

### 10.3 Communication with press

Communication with the press regarding the Programme shall not exceed what is appropriate for the Programme itself. The Fund Operator shall not speak on behalf of the FMO, EEA Grants or the Donor States and shall take appropriate steps to ensure that its statements are not perceived as made on behalf of these entities.

### 10.4 Launch event

A launch event will take place on 19 June 2012.

### 10.5 Publicity after completion of projects

A closing event will be organised in 2016.

### 10.6 Assistance to potential applicants

The Fund Operator shall provide on-going mentoring and support to project applicants throughout the application process. The Fund Operator shall also organise regional workshops and seminars both in Estonian and in Russian.

## **Chapter 11: Code of conduct and conflict of interest**

### 11.1 Ethical standards

1. The Fund Operator shall observe the highest ethical standards during the implementation of the Fund and shall ensure the application of adequate and effective means to prevent illegal or corrupt practices.

2. If the Fund Operator, its sub-contractors, personnel, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to this Agreement or any other contract with the FMO, or for showing favour or disfavour to any person in relation to this Agreement or any other contract with the FMO, then the FMO may terminate this Agreement, without prejudice to any accrued rights of the Fund Operator under the Agreement.

### 11.2 Other income

The payments to the Fund Operator under this Agreement of the management fee and payments by the FMO towards incurred costs related to complementary action shall constitute the only income or benefit the Fund Operator may derive in connection with the Agreement. Neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under this Agreement.

### 11.3 Professional secrecy

The Fund Operator and its staff shall maintain professional secrecy for the duration of this Agreement and after completion thereof. In this connection, except with the prior written consent of the FMO, neither the Fund Operator nor the personnel employed or engaged by it shall at any time communicate to any person or entity any confidential information disclosed to them or discovered by them, or make public any information as to the recommendations formulated in the course of or as a result of implementation of this Agreement. Furthermore, they shall not make any use prejudicial to the FMO, of information supplied to them and of the results of studies, tests and research carried out in the course and for the purpose of performing this Agreement.

#### 11.4 Conflict of interest

1. In addition to the requirement related to the selection process, the Fund Operator shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Agreement. Such conflict of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interest, which could arise during performance of the Agreement, must be notified in writing to the FMO without delay.

2. The FMO has the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Fund Operator shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interest. Without prejudice to employees' rights under national laws, the Fund Operator shall replace, immediately and without compensation from the FMO, any member of its staff exposed to such a situation.

3. The Fund Operator shall refrain from any contract that would compromise its independence or that of its personnel. If the Fund Operator fails to maintain such independence, the FMO may, without prejudice to compensation for any damage that it may have suffered on this account, terminate this Agreement forthwith, without giving formal notice thereof.

### **Chapter 12: Assignment and sub-contracting**

#### 12.1 Assignment

1. An assignment is any agreement by which the Fund Operator transfers its rights under the Agreement or part thereof to a third party.

2. The Fund Operator shall not, without the prior written consent of the FMO, assign the Agreement or any part thereof, or any benefit or interest there under. Any assignment without such consent shall be void.

3. The approval of an assignment by the FMO shall not relieve the Fund Operator of its obligations under the Agreement.

#### 12.2 Sub-contracting

1. Any agreement by which the Fund Operator entrusts performance of a part of the services to a third party is considered to be a sub-contract.

2. Without prejudice to the role of the Partners referred to in Article 2.1, the Fund Operator must obtain a prior written authorization of the FMO

before entering into a sub-contract. Sub-contracts for services related to appraisals and audits of projects are not subject to such authorization.

3. No sub-contract can create contractual relations between any sub-contractor and the FMO. The Fund Operator shall be responsible for the acts, defaults and negligence of its sub-contractors and their experts, agents or employees, as if they were the acts, defaults or negligence of the Fund Operator, its experts, agents or employees.

4. The approval by the FMO of the sub-contracting of any part of the Agreement or of the engagement by the Fund Operator of sub-contractors to perform any part of the services shall not relieve the Fund Operator of any of its obligations under the Agreement. Those services entrusted to a sub-contractor by the Fund Operator cannot be entrusted to third parties by the sub-contractor.

### **Chapter 13: Concluding provisions**

#### 13.1 Contact information and bank details

1. The addresses and contact information of the Parties are:

The FMO:

*Contact person:* Patrizia Brandellero

*Phone:* +32 2 211 1812

*Fax:* +32 2 211 1889

*E-mail:* pbr@efta.int

*Mailing Address:*

Rue Joseph II, 12-16

B-1000 Brussels

Belgium

*Visiting Address:*

Boulevard du Régent 47-48

B-1000 Brussels

Belgium

*The Fund Operator:* Open Estonia Foundation

*Contact person:* Maris Jõgeva

*Phone:* +372 615 5700

*Fax:* +372 615 5701

*E-mail:* [maris@oef.org.ee](mailto:maris@oef.org.ee)

*Mailing and visiting address:*

Estonia pst. 5.a

10143 Tallinn

Estonia

Bank details for payments of management fee and the funds for complementary action:

Account holder: Avatud Eesti Fond

IBAN: EE272200221037678051

SWIFT/BIC: HABAE2X

Bank name: SWEDBANK

Bank address: Liivalaia 8, 15040 Tallinn, Estonia

Bank details for payments of funds for regranting and bilateral relations:

Account holder: Avatud Eesti Fond

IBAN: EE662200221011681446

SWIFT/BIC: HABAE2X

Bank name: SWEDBANK

Bank address: Liivalaia 8, 15040 Tallinn, Estonia

2. Changes of the above contact information and bank details shall be given in writing without undue delay by each Party to this Agreement.

#### 13.2 Document, reporting and information system

1. The FMO may require the Fund Operator to provide the reports referred to in Chapters 6 and 8 through FMO's document, reporting and information system. In such a case, the FMO shall give the Fund Operator access to the system and provide the necessary guidance to enable the Fund Operator to use the system correctly.

2. Should the system referred to in paragraph 1 become unavailable or be discontinued, the FMO may require the Fund Operator to provide these reports in another format provided by the FMO, whether electronic or hard copies.

#### 13.3 Waiver of responsibility

1. Nothing contained in this Agreement shall be construed as imposing upon the FMO any responsibility of any kind for the supervision, execution, completion or operation of the Programme or its projects.

2. Neither the European Free Trade Association, its Secretariat, including the Financial Mechanism Office, its officials or employees can be held liable for any damage or injuries of whatever nature sustained by the Fund Operator or a project promoter, recipient of funds, or any other third person in connection, be it direct or indirect, with this Agreement.

3. The waiver of responsibility according to this Article shall also be applicable towards the project promoters. The project contract made between the Fund Operator and the project promoter on provision of grants from the Programme shall contain a provision on such a waiver.

#### 13.4 Privileges and immunities

Nothing contained in this Agreement shall be deemed a waiver expressed or implied of any privileges and immunities of the European Free Trade Association, its assets, officials or employees.

#### 13.5 Termination due to special circumstances

The FMO may unilaterally terminate the Agreement if changes in the political environment put into doubt the feasibility of the Programme. In such a case the FMO shall pay the Fund Operator for the work already performed, commitments already undertaken which cannot reasonably be cancelled, and reasonable costs for closing down the operation. In addition the FMO shall pay a one time amount of 10,000 EUR. The total amount paid to the Fund Operator shall, however, not exceed the amount of the management fee referred to in Article 1.3.

#### 13.6 Indemnification

1. At its own expense, the Fund Operator shall indemnify, protect and defend the FMO, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Fund Operator in the performance of the Agreement provided that:

- a) the Fund Operator is notified of such actions, claims, losses or damages not later than 30 days after the FMO becomes aware of them;
- b) the ceiling on the Fund Operator's liability to the FMO shall be limited to an amount equal to the management fee referred to in Article 1.3, and such ceiling shall not apply to any losses or damages caused to third parties by the Fund Operator or by the Fund Operator's wilful misconduct;
- c) the Fund Operator's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the Agreement and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.

2. At its own expense, the Fund Operator shall, upon request of the FMO, remedy any defect in the performance of the services in the event of the Fund Operator's failure to perform its obligations under the Agreement.

3. The Fund Operator shall have no liability whatsoever for actions, claims, losses or damages occasioned by:

- a) the FMO omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Fund Operator, or requiring the Fund Operator to implement a decision or recommendation with which the Fund Operator disagrees or on which it expresses a serious reservation; or
- b) the improper execution of the Fund Operator's instructions by agents, employees or independent contractors of the FMO.

4. The Fund Operator shall remain responsible for any breach of its obligations under the Agreement for three years after the approval of the final programme report.

#### 13.7 Breach of contract

1. Either Party commits a breach of contract where it fails to discharge any of its obligations under the Agreement.

2. Where a breach of contract occurs, the Party injured by the breach shall be entitled to damages.

3. In case of a serious breach, the injured Party is, in addition to damages, entitled to terminate the Agreement. The injured Party shall, prior to terminating the Agreement, enter into a dialogue with the other Party with the aim of seeking alternative remedies, unless such a dialogue is not feasible under the circumstances or not likely to result in an amicable solution.

4. In any case where the FMO is entitled to damages, it may deduct such damages from any sums due to the Fund Operator and/or call on the appropriate guarantee.

5. The FMO shall be entitled to compensation for any damage which comes to light after the completion of the Programme in accordance with the law governing the Agreement.

#### 13.8 Force majeure

1. Neither Party shall be considered to be in breach of its obligations under the Agreement if the performance of such obligations is prevented by any circumstances of force majeure which arise

after the date of signature of the Agreement by both Parties.

2. The term "force majeure", as used herein shall mean acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars, whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions, and any other similar unforeseeable events, beyond the control of either Party and which by the exercise of due diligence neither Party is able to overcome.

3. A Party affected by an event of force majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.

4. The Fund Operator shall not be liable for contract damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the Agreement is the result of an event of force majeure. The FMO shall similarly not be liable for delayed payments, for non-performance or for termination by the Fund Operator for default, if, and to the extent that, the FMO's delay or other failure to perform its obligations is the result of force majeure.

5. If either Party considers that any circumstances of force majeure have occurred which may affect performance of its obligations it shall notify the other Party immediately giving details of the nature, the probable duration and likely effect of the circumstances. Unless otherwise directed by the FMO in writing, the Fund Operator shall continue to perform its obligations under the Agreement as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations, which are not prevented by the force majeure event. The Fund Operator shall not put into effect such alternative means unless directed so to do by the FMO.

6. If circumstances of force majeure have occurred and persist for a period of 180 days then, notwithstanding any extension of the period of execution that the Fund Operator may by reason thereof have been granted, either Party shall be entitled to serve upon the other 30 days' notice to terminate the Agreement. If at the expiry of the period of 30 days the situation of force majeure persists, the Agreement shall be terminated and in consequence thereof, the Parties shall be released from further performance of the Agreement.

### 13.9 Dispute resolution

1. Any dispute relating to the conclusion, validity, interpretation or performance of this Agreement shall be resolved amicably through consultation between the Parties.

2. Without prejudice to the privileges and immunities granted to the European Free Trade Association, its assets, premises and officials, any dispute arising out of or in relation with this Agreement not settled within two months of the initiation of the consultation referred to in paragraph 1, shall be finally settled under the

CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with these Rules.

3. The arbitral tribunal shall normally be composed of one arbitrator. However, if the disputed amount is EUR 1,000,000 or higher the arbitral tribunal shall be composed of three arbitrators.

4. The seat of the arbitration shall be Brussels. The arbitration shall be conducted in English. The arbitration shall apply the laws of the Kingdom of Norway.

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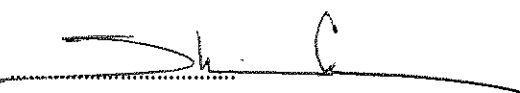
This Agreement is drawn up in two originals in the English language.


Signed in Tallinn on 27/07/2012

For the FMO

Signed in TALLINN on 06/08/2012

For the Fund Operator

  
Stine Andresen  
Director of the FMO

  
Mall Hellam  
Executive Director of Open Estonia Foundation

