

Agreement for the Purchase of Annual Emission Allocation Units (AEAs)

Between

The Republic of Bulgaria
as Seller

and

The Federal Republic of Germany
as Buyer

24 October 2022

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Annex I Description of the Program

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This Agreement for the Purchase of Annual Emission Allocation Units ("**Agreement**") has been made on the final date of its execution between

The Republic of Bulgaria acting through the Ministry of Environment and Water as the seller ("**Seller**") having his offices at 22 Maria Louiza Blvd., 1000 Sofia, Bulgaria
and

The Federal Republic of Germany, acting through the Federal Ministry for Economic Affairs and Climate Action as the buyer ("**Buyer**"), having his offices at Scharnhorststrasse 34-37, 10115 Berlin, Germany,

each a "**Party**" and together, the "**Parties**".

PREAMBLE

WHEREAS:

- A. With a view to meeting the ultimate objectives of the United Nations Framework Convention on Climate Change ("**UNFCCC**"), the European Union ("**EU**") adopted Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 ("**Effort Sharing Decision**" or "**ESD**"), which establishes binding annual greenhouse gas emission targets for EU member states for the period 2013 to 2020.
- B. The Effort Sharing Decision and relevant implementing legislation lay down annual targets known as Annual Emission Allocations and provide certain flexibilities to EU member states in meeting these targets.
- C. Article 3.5 ESD permits an EU member state to transfer the part of its Annual Emission Allocation that exceeds its greenhouse gas emissions for a given year, subject to the use of any other flexibility instruments, to another member state.
- D. The Parties intend to use the flexibility provided in Article 3.5 ESD with respect to the annual emission allocation for the year 2020.
- E. The Parties seek to realize the transfer of a specific amount of annual emission allocation units ("**AEAs**") through a sale and purchase, whereby the Republic of Bulgaria would act as the Seller and the Federal Republic of Germany would act as the Buyer.

- F. The Parties wish to link this sale and purchase to a specific climate mitigation activity in the Republic of Bulgaria, whereby the proceeds received by the Republic of Bulgaria will be invested in its “National Program for Energy Efficiency Measures in Public Buildings”.
- G. The Parties wish to enter into a contract not falling under the scope of the Vienna Convention on the Law of Treaties.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 *Definitions.* Subject to any express provision to the contrary in this Agreement or its respective annexes or unless the context otherwise requires, in this Agreement and its respective annexes the following terms have the following meaning:

Agreement: Means this Agreement for the Purchase of Annual Emission Allocation Units (AEAs).

Annual Emission Allocation: means an EU member state’s annual maximum allowed GHG emissions in the years 2013 to 2020 as specified in Article 3(2) ESD.

Annual Emission Allocation Unit or “AEA”: means a subdivision of a EU member state’s annual emission allocation as determined pursuant to Article 3.2 and Article 10 ESD equal to one tonne of carbon dioxide equivalent.

Annual Report: Has the meaning given to the term in section 5.9 and following the template provided in Annex II.

Annex I: Means the annex to the Agreement that includes the description of the Program.

Annex II: Means the annex to the Agreement that includes the template for the Annual Report.

Annex III: Means the annex to the Agreement that includes the template for the Final Report.

Auditor: Has the meaning given to the term in section 5.10.

Banking Day: A day (other than a Saturday or Sunday or legal holiday) on which commercial banks and the relevant exchanges are generally open for business in Berlin, Federal Republic of Germany, and Sofia, Bulgaria.

Beneficiary: Has the meaning given to the term in Annex I.

Buyer's Registry Account: Means the Registry Account of the Buyer, with the No. [REDACTED].

Carbon Dioxide Equivalent or CO₂e: The base reference for the determination of global warming potential of Greenhouse Gases as listed in the Kyoto Protocol in units of carbon dioxide.

Contract AEAs: Has the meaning given to the term in section 2.1.

Contract Value: Means the total amount in EUR due as payment for Contract AEAs and Option AEAs under the Agreement.

Agreement Term: Means the time period described in clause 11.8.

Delivery: Has the meaning given to the term in section 3.1, and "Deliver" shall be construed accordingly.

Eligibility Criteria: Means the requirements for the use of the ESD's flexibility instruments, notably its article 3.4 and its article 3.5. It includes, but is not limited to, compliance with the reporting obligations under Article 6 ESD and meeting its Annual Emission Allocation in each of the years from 2013 to 2020.

European Transaction Log or "EUTL": Means the standardized electronic database as defined in Article 6 of the Registry Regulation.

EU Rules: means the Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 ("Effort Sharing Decision" or "ESD"), Regulation (EU) No 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions ("Mechanism for Monitoring Regulation" or "MMR"), and Commission Regulation (EU) No 389/2013 ("Registry Regulation"); as well as and any relevant regulations, directives, decisions, guidance or other regulatory instrument, each as amended from time to time.

EURIBOR: Means for any time period the percentage rate per annum (rounded up, if necessary, to the next 1/16th of one per cent.) quoted on Reuters' page EURIBOR01 or, if this page does not have the required details or is not accessible, on Bloomberg page Corp EBF (or on a successor page which replaces Reuters' page EURIBOR01 or Bloomberg page Corp EBF) at or about 11.00 a.m. Brussels time on the second Banking Day before the first day of that time period as the EURIBOR rate of the European Banking Federation for Euro term deposits in the European interbank market for the same period as that time period or, if none of the periods quoted by Reuters or Bloomberg are the same as that time period in question, the EURIBOR rate so quoted for the next longer time period.

Euro or EUR: Means the lawful currency of the member states of the European Union that adopt single currency in accordance with the EC Treaty.

Event of Default: Means an event specified as such in clause 14.

Final Report: Has the meaning given to the term in section 5.9 and following the template provided in Annex II.

Force Majeure: means the occurrence of any event or circumstance beyond the control of a Party that could not, after using all reasonable efforts, be overcome (such as acts of God, war, natural disasters, strike and lockout, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration) and which makes it impossible for that Party to perform its obligations under the Agreement. For the avoidance of doubt, lack of funds shall not constitute a Force Majeure.

Greenhouse Gases or GHGs: The six gases listed in Annex A to the Kyoto Protocol.

Lien: Means any mortgage, charge, pledge, lien, assignment, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person by way of security for the payment of a debt or any other monetary obligation.

NTEF: Means the Bulgarian National Trust Eco Fund established under the Bulgarian Environmental Protection Act of 1995.

Parties: Seller and the Buyer, and each of them are individually referred to as a **Party**.

Program: The sub-program to the Bulgarian Investment Climate Programme as further described in ANNEX I.

Registry Account: Means the ESD Compliance Account as defined in the Registry Regulation. See also “**Buyer’s Registry Account**”.

Subsidized Project: Means an energy saving measure funded under the Program.

Taxes: All national, state, regional, provincial, local, foreign and other net income, gross income, gross receipts, sales, use, stamp, ad valorem, registration, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, fuel, gas import, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever imposed by any governmental entity, whether in effect at the time of the Agreement or thereafter imposed, together with any interest and any penalties, additions to tax or additional amounts with respect thereto.

UNFCCC: Has the meaning given to that term in the Preamble.

- 1.2 *Capitalized Terms.* The capitalized terms used in this Agreement shall have the meanings expressly set forth in section 1.1 or elsewhere in the body of this Agreement or its annexes.
- 1.3 *Interpretation.* Subject to any express provision to the contrary in this Agreement or unless the context otherwise requires, references in this Agreement to:

- 1.3.1 to any document (including this Agreement) is to that document as varied, amended, novated, ratified or replaced from time to time;
 - 1.3.2 to any Party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
 - 1.3.3 to the singular includes the plural and vice versa, and to a gender includes all genders; to a Party means a Party to this Agreement, and to a clause means a clause of this Agreement (unless specified otherwise);
 - 1.3.4 to any EU Rules, statute or to any treaty or statutory provision includes any statutory modification or re-enactment of it or any treaty or statutory provision substituted for it, and all protocols, rules, modalities, guidelines, procedures, ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it; and to the words "including", "include", "included", "such as", "consisting of" and the like shall be deemed to be completed by the expression "but not limited to".
- 1.4 *EU Rules.* The terms of this Agreement shall be interpreted in a manner that is consistent with the EU Rules.
- 1.5 *Headings.* The headings of the provisions herein are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.
- 1.6 *Conflict.* In the event of any conflict with **Annex I** or any other relevant document, this Agreement shall prevail.

2. SALE AND PURCHASE

- 2.1 *Contract AEs.* The Seller agrees to sell and Deliver, and the Buyer agrees to purchase and accept 3,789,668 (in words: three million seven hundred eighty-nine thousand and six hundred sixty-eight) AEs ("Contract AEs"), together with all rights and entitlements pertaining to the Contract AEs, in accordance with the terms and conditions of this Agreement.
- 2.2 *Option AEs.* The Seller agrees to sell and Deliver to the Buyer on each Option Delivery Date and the Buyer agrees to purchase and accept from the Seller such Option AEs as the Buyer has agreed to purchase pursuant to section 2.3.
- 2.3 *General.* In addition to the Buyer's purchase of the Contract AEs, the Seller grants the Buyer the right, but not the obligation ("Option"), exercisable at the Buyer's sole and absolute discretion on one or more occasions on or before 15 February 2023 ("**Final Option Day**"), to purchase up to 5,210,332 (in words five million two hundred ten thousand three hundred and thirty-two) AEs ("**Option AEs**"), together with all rights and entitlements pertaining to the Option AEs, in accordance with the terms and conditions of this Agreement.
- 2.4 *Option Exercise.* To exercise the Option referred to in section 2.3, the Buyer shall notify the Seller in writing ("**Option Notification**"). The Seller shall confirm the receipt of the Option Notification immediately. For the avoidance of doubt, the failure to confirm the receipt of the Option Notification does not affect its effectiveness.

- 2.5 *Exclusivity.* During the Option Term the Seller shall not offer for sale or transfer any Option AEs to any third party. Furthermore, subject to section 2.6 below, the Seller may sell and transfer only those AEs to a third party that it holds in excess of the number of GHG emissions recognized in the 2020 GHG Commission Implementing Decision, after deducting the combined sum of Contract AEs and Option AEs and other AEs it may have transferred.
- 2.6 *Option Waiver.* After the Final Option Day, the Buyer shall be deemed to have waived its right to the Option referred to in section 2.3, and the Seller shall be free to sell the relevant AEs to a third party.

3. DELIVERY

- 3.1 *Contract AEs.* The Seller shall transfer the Contract AEs free from any Liens to the Buyer's Registry Account (Year 2020), in a single tranche by 20 November 2022 at the latest.
- 3.2 *Option AEs.* The Seller shall transfer any amount of Option AEs for which the Buyer has exercised the Option pursuant to section 2.4, free from any Liens to the Buyer's Registry Account within ten (10) Banking Days of the receipt of the Option Notification.
- 3.3 *Delivery.* The transfer of Contract AEs and of Option AEs is complete and the AEs in question deemed delivered when the final notification in the total sequence of message and/or notification exchanges in respect of the transfer has been received by the EUTL and the AEs have been credited to the Buyer's Registry Account ("**Delivery**").
- 3.4 *Notice.* The Seller shall promptly notify the Buyer upon each Delivery.
- 3.5 *Transfer of title.* Full legal title to the Contract AEs and Option AEs passes from the Seller to the Buyer upon Delivery of such AEs. The Seller must take all steps required to ensure the proper transfer of full legal title to all Contract AEs and Option AEs Delivered to the Buyer.

4. PRICE AND PAYMENT

- 4.1 *Unit Price.* The price for each Contract AEA and Option AEA Delivered shall be Euro 1.00 (in words: one Euro and zero Cent).
- 4.2 *Invoice.* The Seller shall send to the Buyer a separate invoice for each Delivered AEA tranche ("**Invoice**"). The Invoice shall be submitted to the Buyer together with the notification referred to in section 3.4. Each Invoice shall include:
- 4.2.1 the number of AEs Delivered;
 - 4.2.2 the identification as Contract AEs or Option AEs;
 - 4.2.3 the relevant Delivery Value in EUR; and
 - 4.2.4 the account details as defined in section 4.4 below.
- 4.3 *Payment arrangements.* The Buyer will initiate the payment to the Seller of the relevant Delivery Value for each Delivery within 15 Banking Days after the later of (i) Delivery of the AEs in the Buyer's Registry Account in accordance with the provisions of this Agreement, (ii) the notification referred to in section 3.4, and (iii) receipt of a duly submitted Invoice.

4.4 *Payments to Seller.* Any and all payments to be made by the Buyer to the Seller under or in connection with the Agreement shall be made in Euro and to the following bank account:

██████████	████████████████████
██████████	██████████, BIC: ██████████
██████████	████████████████████
██████████	██████████
██████	████████████████████

4.5 *Taxes, charges and fees.* Each Party shall cover its own Taxes, bank service charges, and transaction fees and, to the extent required by law, shall correctly account for any value-added tax properly due in its jurisdiction.

5. USE OF AEA PROCEEDS

5.1 *AEA Proceeds.* All payments received by the Seller for the Delivery of AEAs (“AEA Proceeds”) Seller shall be used for the sole purpose of funding the sub-program to Bulgaria’s *Investment Climate Programm* as further described in **Annex I (“Program”)**.

5.2 *Implementation Window.* All Proceeds shall be fully disbursed and invested in the Program within five (5) years from their receipt (“**Implementation Window**”).

5.3 *Program Costs.* The costs for the management of the Program, including operations, supervision, monitoring, reporting, and audits, as well as public communications and awareness-raising campaigns (“**Program Costs**”) shall not exceed EUR 570,000.

5.4 *Implementing bodies.* The Seller shall be responsible for the implementation of the Program and all the operational tasks conferred upon it under this Agreement through the Bulgarian National Trust Eco Fund (“NTEF”), which will fulfil the relevant roles and tasks as foreseen under the Program. In case the NTEF proves incapable to execute its role the implementation of the Program, the Seller shall appoint an appropriate replacement; until then, the Seller shall fulfil the relevant duties through its own and duly appointed staff.

5.5 *Changes.* The Seller – acting through the NTEF – shall not make a material change in the Program without prior consent from the Buyer and it shall inform the Buyer immediately of any changes it intends to suggest stating the reasons, the planned measures and the consequences of the changes envisaged. In case that one or more of the Subsidized Projects are cancelled or not or only partially implemented, the Seller shall implement alternative projects comparable to them, providing details concerning the cancelation and/or the alternative implementation in the Progress Reports.

5.6 *Compliance.* The Seller shall at all times ensure compliance by all Beneficiaries under the Program with the terms of conditions set therein and procure immediate repayment of funds in case funds are found to have been misused; whenever a monitoring audit shows that the relevant targets set have not been met, the Seller shall investigate and remedy the situation, where appropriate. Any agreements the Seller – acting through the NTEF – concludes with a Beneficiary shall be in accordance

with the Program and shall be made enforceable under laws of the Republic of Bulgaria. The Seller shall provide the Buyer with an English translation of any model agreements.

- 5.7 *Books.* The Seller – acting through the NTEF – shall maintain at all times books and records showing unequivocally all grants, Beneficiaries, agreements concluded with Beneficiaries, the concessional loans the grants are linked to, the up-to-date amounts of proceeds not yet allocated for funding, Misused Proceeds and those under investigation, as well as all disbursements and other costs. The Seller shall enable the Buyer to inspect all books and records at any time.
- 5.8 *Jeopardy.* The Seller shall promptly inform the Buyer of any and all circumstances that could preclude or jeopardize the implementation of this Agreement.
- 5.9 *Reporting.* By 31 March each year until 31 March 2027, the Seller shall provide annual reports following the model provided in **Annex II (“Annual Reports”)**. By 31 March 2028, the Seller shall provide a final report (“**Final Report**”) covering the entire Implementation Window and following the model provided in **Annex III**. The Final Report may be submitted as soon as all the AEA Proceeds have been spent in accordance with the Program and this Agreement, all Subsidized Projects (or any alternatives as implemented in accordance with this Agreement) have been fully realized and their results verified. Once the Final Report is submitted and accepted by the Buyer, there is no further obligation for the Seller to submit any new Annual Reports.
- 5.10 *Audits.* To ensure the agreed use of the Proceeds, Parties agree to the following monitoring, reporting and auditing procedure:
- 5.10.1 The Seller – acting through the NTEF – shall appoint and employ an independent, internationally recognized auditing firm, (“**Auditor**”) to audit annually, the last Audit to be submitted within three (3) months of the Final Report, the disbursement of the Proceeds by the Seller to fund the Program and the achieved GHG reductions in accordance with the Program throughout the Implementation Window. Before appointment of the Auditor, the Seller shall send to the Buyer a document which contains general information of the Auditor and the selection process. The auditing details shall include International Standard on Assurance Engagement ISAE 3000 (Revised), Assurance Engagements Other than Audit or Review of Historical Financial Information.
- 5.10.2 The Seller – acting through the NTEF – shall provide any information or material which the Buyer reasonably requests in relation to the Program, the budget pertaining thereto and the proper use of the Proceeds under this Agreement within twenty (20) Banking Days upon receipt of such Buyer’s request.
- 5.10.3 The Seller – acting through the NTEF – furthermore agrees to authorize the Auditor to have full access to all relevant data, information, documents, and invoices that are relevant to the disbursement of the Proceeds by the Seller to fund the Subsidized Projects and the Program Costs.
- 5.10.4 The Buyer shall have a right to request on-site inspection from the Seller and shall have a right to conduct on-site inspections of the Subsidized Projects at the Buyer’s cost at any time. And

5.10.5 With respect to the Annual Reports and the Final Report, the Buyer shall be entitled, acting reasonably, to make comments on the reports and demand further data, information, and documents that are reasonably connected to the Subsidized Projects and the Program.

6. REPRESENTATIONS, WARRANTIES, COVENANTS AND UNDERTAKINGS

6.1 *Seller.* The Seller represents, warrants, covenants, as of the date of this Agreement and on the date on which the Seller makes the Delivery of any Contract AEAs and Option AEAs (in each case by reference to the facts and circumstances then existing), that:

6.1.1 The Seller has all requisite legal power and authority, including capacity to agree to arbitration, to execute this Agreement and to carry out the terms, conditions, and provisions hereof and all legislative, administrative, or other action required to authorize the execution and performance by the Seller of this Agreement and the transactions contemplated hereby have been duly taken and are in full force and effect.

6.1.2 This Agreement constitutes valid, legal, and binding obligations of the Seller, enforceable in accordance with the terms hereof.

6.1.3 All information which is material for the purpose of this Agreement, including but not limited to the Program and that is furnished in writing by or on behalf of the Seller to the Buyer and is identified as being subject to or connected to this Agreement is, or shall be, as of the date it is, or will be, furnished to the Buyer, true, accurate and complete in every material respect.

6.1.4 Other than as contemplated by this Agreement, the Seller has not sold, transferred, assigned, licensed, disposed of, granted, or otherwise created any Lien over its tradable amount of AEAs that would jeopardize Delivery under this Agreement.

6.1.5 At the time of the Delivery, the Buyer will receive valid legal title to the Contract AEAs and Option AEAs free of any Liens.

6.1.6 The Seller ensures that the Proceeds shall not be used by the Seller (or any other entity mandated to perform services to the Seller or the NTEF for any purpose (including bribery) that is contrary to the laws, regulations, rules, guidelines, approvals, orders or decrees of the Republic of Bulgaria or the EU and applicable international law, nor for any purpose other than disbursement to or implementation of the Program and the coverage of Program Costs.

6.1.7 The Seller guarantees that the Program is not legally mandated under the laws of the Seller; that the Proceeds will be used entirely to add onto or complement existing government obligations or planned commitments of the Seller; and that the GHG emission reductions achieved by the Program reflect mitigation efforts beyond business-as-usual assumptions. For the avoidance of doubt, the Proceeds must not release the Seller government or a government body of the Seller of any domestic funding commitments.

- 6.1.8 All the statements made with respect to the Program, including the statements made in Annex I, are correct and that it intends to implement it accordingly through proper staff, the NTEF, and other entities it employs during the course of implementation, as the case may be.
- 6.1.9 The Seller shall hold the amount of AEAs which is required to maintain to meet its compliance obligations under the ESD and, in addition, to meet its Delivery obligations under this Agreement.
- 6.1.10 The Seller guarantees that this Agreement does not contravene, conflict with, or result in a breach of any applicable Bulgarian law, regulation, governmental decision. And
- 6.1.11 That no Event of Default, nor a set of facts or circumstances which would constitute an Event of Default, has occurred with respect to the Seller's actions or inactions and no such event would occur as a result of the Agreement entering into force or the Seller performing its obligations under the Agreement.
- 6.2 *Seller undertakings.* The Seller undertakes throughout the term of this Agreement the following:
- 6.2.1 The Seller shall take all necessary measures to maintain, prior to and during Delivery of Contract AEAs and Option AEAs, fulfilment of the Eligibility Criteria and to ensure the operationality of the Seller's Registry Account.
- 6.2.2 The Seller must not take any action that could put its compliance obligations under the ESD in jeopardy and risk corrective actions under article 7 ESD.
- 6.2.3 The Seller shall use the AEA Proceeds and implement the Program as laid out in article above.
- 6.3 *Buyer.* The Buyer represents, warrants and covenants, as of the date of this Agreement and on the date on which the Buyer makes the payment of the Contract Value (in each case by reference to the facts and circumstances then existing), that:
- 6.3.1 The Buyer has all requisite legal power and authority, including capacity to agree to arbitration, to execute this Agreement and to carry out the terms, conditions, and provisions hereof.
- 6.3.2 All legislative, administrative, or other action required to authorize the execution and performance by the Buyer of this Agreement and the transactions contemplated hereby have been duly taken and are in full force and effect.
- 6.3.3 This Agreement constitutes valid, legal, and binding obligations of the Buyer, enforceable in accordance with the terms hereof.
- 6.3.4 All information which is material for the purpose of this Agreement and that is furnished in writing by the Buyer to the Seller and is identified as being subject to or connected to the

Agreement is, or shall be, as of the date it is, or will be, furnished to the Seller, true, accurate and complete in every material respect.

- 6.3.5 The Buyer maintains at all times a fully operational Buyer's Registry Account.
- 6.3.6 The Buyer guarantees that this Agreement does not contravene, conflict with or result in a breach of any applicable German law, regulation, governmental decision. And
- 6.3.7 That no Event of Default, nor a set of facts or circumstances which would constitute an Event of Default, has occurred with respect to the Buyer's actions or inactions and no such event would occur as a result of the Agreement entering into force or the Buyer performing its obligations under the Agreement.
- 6.4 *Information.* Each Party shall inform the other Party immediately in writing upon any change to its above-mentioned representations, warranties, covenants and/or undertakings.
- 6.5 *Improper payments and illegal activities.* Neither Party nor any of its officers, directors, employees or agents acting on its behalf nor (to the best of the respective Party's knowledge and belief) any implementation partner or Beneficiary has made or received any improper gifts or payments for the purpose of influencing any person in connection with the Program, or is/are involved or have authorized any person acting on their respective behalf to be involved in any illegal activities in relation to drugs, terrorism, money laundering or similar activities.
- 6.6 *Costs.* All Taxes, obligations, fees and other governmental charges which are due and payable have been paid.
- 6.7 *EU legal compliance.* The Seller shall establish the necessary procedures and safeguards to ensure that the Program be operated in compliance with relevant EU law on health, environment, climate change, services, consumer protection and other, as well as state aid and financial crimes, including Directive (EU) 2015/849 on preventing the use of the financial system for money laundering or terrorist financing. The Buyer represents and warrants that the Program funding be compatible with Article 107 and Article 108 of the EU Treaty on the Functioning of the European Union and relevant legislation adopted in this context, including on block exemptions.
- 6.8 *Access for the Buyer.* Upon reasonable notice, the Seller shall provide the Buyer and any other person designated by the Buyer, or will procure that they are provided, with access during normal business hours to the Program and to its books, records and all information relating to the Program for inspection purposes and shall provide such persons, or ensure that they are provided, with all necessary assistance for this purpose.

7. EVENTS OF DEFAULT AND REMEDIES

- 7.1 *Event of Default.* The occurrence at any time with respect to a Party of any of the following events constitutes an event of default ("Event of Default") with respect to such Party:
 - 7.1.1 the Party fails to pay when due any amount payable by it under this Agreement, except that the failure is caused by a technical or administrative error not attributable to the Party, or a disruption to payment or communication systems in any relevant financial market which

are, in each case, required to operate in order for such payments to be made in connection with this Agreement (and in each case, is not caused by, and is beyond the control of, the defaulting Party).

- 7.1.2 the Seller fails to Deliver the Contract AEs and/or Option AEs in accordance with the provisions of this Agreement.
 - 7.1.3 the Seller including the NTEF and any of the persons or entities the Seller appoints and/or employs to implement the Program fails to implement, operate, maintain and/or supervise the Subsidized Projects and/or to use the Proceeds in strict accordance with this Agreement and the Program.
 - 7.1.4 With respect to the Seller, the AEA Proceeds, or any portion thereof have been used for purposes, intentionally or not, other than the Program or to cover the agreed Program Costs ("**Misused Proceeds**").
 - 7.1.5 the Party fails to perform any material obligation under this Agreement, each of the obligations listed in section 6.2 above being deemed material.
 - 7.1.6 any representation or warranty made or repeated or deemed to have been made or repeated by the Party in this Agreement proves to have been incorrect or misleading (in any material respect when made or repeated or deemed to have been made or repeated); and
 - 7.1.7 the Republic of Bulgaria fails to maintain the fulfilment of the Eligibility Criteria until Delivery of all Contract AEs and Option AEs is completed.
- 7.2 *Non-defaulting Party.* Upon the occurrence of any Event of Default, the non-defaulting Party may exercise one or more rights provided in this Agreement or under applicable law. The exercise or failure to exercise of any one or more rights or remedies shall not operate as a waiver of any rights or remedies hereunder.
- 7.3 *Notice of Remedial Action.* The defaulting Party must immediately – not exceeding three (3) Banking Days from the day it becomes aware of it – give notice of the Event of Default to the other Party in writing, specifying the underlying reasons and detailing whether it believes the Event of Default can be cured. If it does, the defaulting Party shall propose the appropriate remedial action and set out a firm timeframe when this action would be complete ("**Remedial Action**").
- 7.4 *Rejection of Remedial Action.* Exercising its reasonable discretion, the non-defaulting Party may reject the Remedial Action in writing. If the cure period proposed by the defaulting Party exceeds ten (10) Banking Days, the Remedial Action is deemed rejected by the non-defaulting Party, unless the non-defaulting Party decides otherwise and notifies the defaulting Party of its intention in writing within ten (10) Banking Days following the submission of the Notice of Remedial Action.
- 7.5 *Termination.* If the defaulting Party fails to submit a Notice of Remedial Action as due, if the Remedial Action is rejected or deemed rejected, or if has failed to cure the Event of Default in accordance with the Notice of Remedial Action, the non-defaulting Party may upon written notice to the defaulting Party terminate this Agreement with immediate effect.

- 7.6 **AEA Return.** As a result of termination, if the defaulting Party is the Buyer and to the extent that the Seller has Delivered Contract AEA's and/or Option AEA's to the Buyer and the Buyer has not paid the Contract Value in relation to such AEA's to the Seller, the Seller may require the Buyer to deliver to the Seller AEA's free of any Liens in the same number as the Contract AEA's and/or Option AEA's Delivered, within ten (10) Business Days of the Seller's notice of termination of this Agreement.
- 7.7 **Replacement AEA's.** As a result of termination, if the defaulting Party is the Seller and if the Event of Default consists in the failure to Deliver any Contract AEA's or Option AEA's as due ("**Shortfall AEA's**"), the Buyer may purchase an amount of AEA's equivalent to the Shortfall Amount from another EU member state ("**Replacement AEA's**") and, if the price of the Replacement AEA's is higher than the Unit Price, request that the Seller pay the difference, as well as all direct costs related to the purchase, including legal and brokerage fees. In case the Buyer fails to purchase Replacement AEA's on the market despite reasonable efforts to do so, the Seller shall indemnify, defend and hold harmless the other Buyer from any ensuing liability and loss, including from corrective action under Article 7 ESD, which directly or indirectly arise out of such breach.
- 7.8 **Unused AEA Proceeds.** As a result of termination, if the defaulting Party is the Seller, the Seller must immediately block the use of the remaining – non-spent – AEA Proceeds for the Program. The Buyer may in its absolute discretion agree to the continuation of the use of the AEA Proceeds under the Program or direct the Seller to transfer the amount to a not-for-profit organization based in the Republic of Bulgaria.
- 7.9 **Misused Proceeds.** Irrespective of termination, in case of Misused Proceeds, the Buyer may request that the equivalent amount in EUR be repaid to the Buyer within one (1) month of such written request.
- 7.10 **AEA Transfer Finality.** For the avoidance of doubt, if the termination is the result of a default by the Seller, there is no obligation for the Buyer to return any Contract AEA's and/or Option AEA's received by the Buyer.

8. FORCE MAJEURE

- 8.1 **Events of Force Majeure.** A Party's failure to perform any of its obligations under the Agreement due to Force Majeure will, subject to section 8.2 below, have the following consequences:
- 8.1.1 **Postponement of date of performance.** If any delay occurs, the performance of both Parties' affected obligations will be postponed for so long as is made necessary by the Force Majeure.
- 8.1.2 **Limited liability.** The affected Party will not be liable for any loss or damage suffered or incurred by the other Party arising from the Force Majeure.
- 8.1.3 **Termination of Contract.** If any of a Party's obligations under this Agreement is suspended by reason of Force Majeure for more than 2 months, the other Party may terminate the Agreement.
- 8.1.4 **Mitigation.** Each Party must use its reasonable endeavours to minimise the effects of any Force Majeure.

8.2 *Applicability of Force Majeure exception.* Section 8.1 only applies if:

- 8.2.1 the affected Party could not have avoided the effect of the Force Majeure by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all relevant factors, it ought reasonably to have taken but did not take; and
- 8.2.2 the affected Party has used reasonable endeavours to mitigate the effect of the Force Majeure and to carry out its obligations under this Agreement in any other way that is reasonably practicable; and
- 8.2.3 the affected Party advises the other Party in writing as soon as reasonably practicable (at the latest within three (3) Banking Days of becoming aware of it) of:
 - (i) the event or circumstance constituting Force Majeure;
 - (ii) its estimate of the likely effect of that Force Majeure on its ability to perform its obligations under this Agreement; and
 - (iii) its estimate of the likely period of that Force Majeure; and
- 8.2.4 the affected Party uses all reasonable endeavours to terminate or overcome the event or circumstance constituting Force Majeure and resumes full performance of its obligations as soon as reasonably practicable.

9. **CONFIDENTIALITY**

- 9.1 *Each* Party shall be allowed to disclose such information regarding this Agreement as required by any relevant law or ruling of competent courts or authorities in the Republic of Bulgaria or the Federal Republic of Germany or the EU.
- 9.2 This Agreement and its terms shall otherwise be treated as confidential by the Parties. The Parties may, however, disclose the existence of this Agreement, the identity of the Parties, the use of the AEA Proceeds, and the details of the Program. The Parties agree that the number of AEAs transacted, and the Contract Value shall not be disclosed before the end of the Final Option Day.
- 9.3 Subject to section 9.2 above, both Parties shall keep confidential any information of the other Party that is: (a) qualified by any Party as confidential; or (b) apparently, on its face, intended to be kept confidential, as evidenced by the communication from the concerned Party ("**Confidential Information**") and shall not disclose the same to any third party without prior written consent of the other Party. Notwithstanding the foregoing, the Confidential Information shall not include information on the Contract Value, or any the information that:

- 9.3.1 is now or subsequently becomes generally available to the public through no fault or breach on the part of the receiving Party;
 - 9.3.2 the receiving Party can demonstrate to have had rightfully in its possession prior to disclosure to the receiving Party by the disclosing Party;
 - 9.3.3 is independently developed by the receiving Party without the use of any Confidential Information of the other Party under this Agreement; or
 - 9.3.4 is supplied to the receiving Party without restriction by a third party who is under no obligation to a disclosing Party to keep the information confidential.
- 9.4 Notwithstanding sections 9.29.3 above, each Party is entitled to disclose any Confidential Information to its Parliament, any government entity and any officers, employees, representatives, agents and advisers of such institutions, it being understood that the status of confidentiality within these bodies shall be decided by the applicable laws governing transparency of information, access to documentation and treatment of confidential information.
- 9.5 Except as otherwise agreed between the Parties in writing, this article 9 will remain in full force and effect for a period of two (2) years after the termination or expiration of this Agreement.

10. NOTICES AND AMENDMENTS

10.1 Any notice, communication, request, report or correspondence required or permitted under the terms of this Agreement shall be in writing, in the English language (it being understood that any such communication in a language other than English shall be of no force or effect), and shall be delivered personally, or via courier, registered mail, facsimile or sent as attached pdf file by electronic mail against e-mail confirmation from and to the following persons (the "Contact Persons"):

10.1.1 For the Seller: **Ministry of the Environment and Water**

[REDACTED]

10.1.2 For the Buyer: **Federal Ministry for Economic Affairs and Climate Action**

[REDACTED]

10.2 The Parties shall inform each other in writing about any changes in the Contact Persons, their addresses, fax numbers or e-mail addresses.

- 10.3 Any notice or other communication shall be deemed to have been received:
- 10.3.1 in the case of personal delivery, on the calendar day delivered; or
 - 10.3.2 in the case of registered mail or courier, when delivered to the recipient or 30 calendar days after being deposited with the courier or the post office, whichever is earlier; or
 - 10.3.3 in the case of delivery by facsimile, on the calendar day a valid transmission report confirming good receipt is generated; or
 - 10.3.4 in the case of delivery by electronic mail, on the calendar day a reply e-mail confirming good receipt is generated.
- 10.4 *Amendments.* Any supplement or amendment to this Agreement must be in writing in accordance with clause 10.1. Any waiver of the requirement of written form must also be in writing.

11. MISCELLANEOUS

- 11.1 *Assignment.* Neither Party shall be entitled to assign its rights and/or novate its obligations under the Agreement to a third party without the prior written consent of the other Party (not to be unreasonably delayed or withheld).
- 11.2 *Severability.* If any provision of this Agreement is found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is found to be invalid or unenforceable but would be valid and enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such deletions or modifications as may be necessary to make it valid and enforceable.
- 11.3 *Waivers and exercise of rights.* If either Party does not exercise or exercises only partially any of its rights under this Agreement, that will not be a waiver or variation of such a right. The single or partial exercise of any right by such party will not prevent any further exercise of such a right nor the exercise of any other right in the future.
- 11.4 *Entire Contract.* This Agreement (including its annexes) constitutes the entire Agreement and understanding of the Parties with respect to its subject matter and supersedes any representations previously given or made with respect to its subject matter other than those given or made in the Agreement, but nothing in this section limits or excludes any liability for fraud in relation to those representations.
- 11.5 *Nature of Relationship.* The Seller and the Buyer acknowledge and agree that the contractual relationship created by this Agreement is one of buyer and seller on an arm's length basis. Nothing in this Agreement shall constitute or be deemed to constitute to create a partnership, joint venture, agency, employer-employee relationship between the Parties or any fiduciary duty owed by one Party to the other Party.
- 11.6 *No set-off by the Seller.* Neither Party shall be entitled to assert any rights of retention or rights of set-off or counterclaim against obligations under this Agreement unless such rights are undisputed or confirmed by non-appealable judgment.

- 11.7 *Interest on overdue payments.* If either Party is overdue with any payment due under or in connection with this Agreement, the late-paying Party shall be liable to pay interest on the overdue amount at an annual rate equal to the three months EURIBOR plus 2% p.a. compounded monthly from and including the date when payment was due until the date of payment.
- 11.8 *Term.* This Agreement remains valid until all its obligations of the Buyer and the Seller, save any obligations under section 9, have been fulfilled (“**Agreement Term**”).

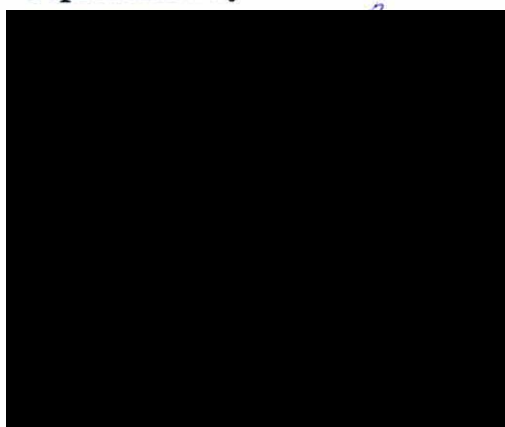
12. LEGAL NATURE, LAW AND JURISDICTION

- 12.1 *Commercial contract.* The Agreement will have the nature of a commercial contract between the Parties not falling under the scope of the Vienna Convention on the Law of Treaties. The Parties, in connection with this Agreement, unconditionally and irrevocably agree that the execution and performance of this Agreement by the Parties constitute a private and commercial act rather than a public or governmental act, and, that no immunity exists in respect of the Parties and their assets and no immunity can be claimed by it with respect to their assets, should any proceedings be brought against the Parties or their assets arising from or in connection with this Agreement.
- 12.2 *Applicable law.* This Agreement is governed by German law, without regard to conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to this Agreement.
- 12.3 *Consultation.* In the event of differences of opinion on their legal obligations, the Parties engage to hold arbitration proceedings with the objective of achieving a fair agreement doing justice to their interests by means of a consultation – with the support of a neutral mediator, if so requested by either Party – taking the economic, legal, personal and social situation into due account. Each Party may commence such consultations by giving the other Party a written notice of any dispute not settled in the normal course of business (“**Consultation Notice**”).
- 12.4 *Dispute.* Any dispute not settled by consultation and negotiation within forty (40) Banking Days from the receipt of the Consultation Notice or within any other timeframe mutually agreed by the Parties in writing, shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of three (3) members. The seat of the arbitration shall be Berlin, Germany. The language of the arbitration shall be English. The award of the arbitrator shall be final and binding upon the Parties.
- 12.5 *Waiver of immunity.* To the extent that at the date of the Agreement or at any time in the future either Party can claim for itself or its assets immunity in any jurisdiction, whether it be immunity from proceedings, from execution, from attachment or from other legal process, each such Party irrevocably agrees not to claim and irrevocably waives any such immunity to the fullest extent permitted by the laws of the relative jurisdiction.
- 12.6 *Recourse.* Nothing in this Agreement shall prevent either Party from having recourse to a court of competent jurisdiction to seek a preliminary injunction or such other provisional judicial relief.
- 12.7 *Copies.* This Agreement shall be executed in two copies in the English language, each of which shall be deemed an original.

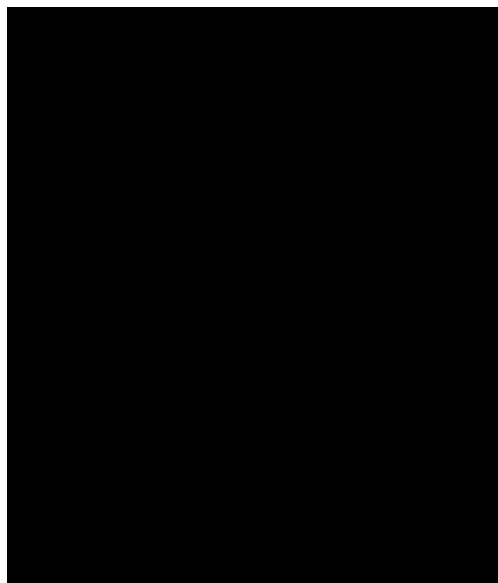
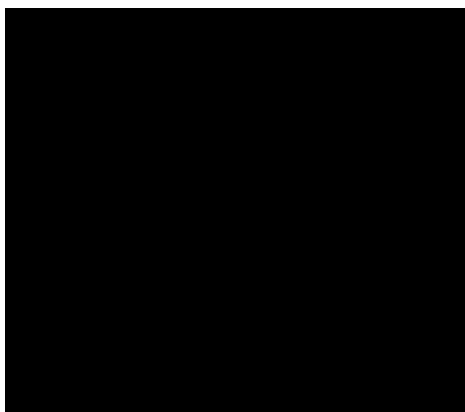
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IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement upon signature by both Parties or in the case of signing at a different time, on the day of the last signature.

The Republic of Bulgaria, acting through the Ministry of Environment and Water, the Ministry of Finance, and the Ministry of Energy, and represented by



The Federal Republic of Germany, acting through the Federal Ministry for Economic Affairs and Climate Action and represented by



ANNEX I: Description of the Program

The Program is a sub-program to the Bulgarian Investment Climate Programme (“**Umbrella Program**”), which is managed by the National Trust Eco Fund (“**NTEF**”) and aims at the reduction of greenhouse gas emissions in the buildings sector.

Applicants to the Umbrella Program have to prepare and submit the necessary documents according to the current published invitation for the expression of interest:

- Open invitation for project proposals¹
- Guidelines to the invitation for project proposals²

Program Details

For this Program, a new expression of interest will be released by March 2023 targeting energy efficiency and energy saving measures in municipal schools and kindergartens. These interventions are not eligible for funding under any other national, EU or other active programs included in the municipal programs for energy efficiency.

It is expected that the proceeds from the Contract AEAs will be sufficient to support around 15 projects (“**Subsidized Projects**”) across small (up to 100 students), mid-level (100-500 students) and large (above 500 students) facilities. In all cases, the level of subsidy is up to 70% of the total costs for the following types of interventions:

- EE for the building envelope
- On-site renewable energy sourcing
- Ventilation through recuperation (adding bonuses at the application stage)
- Heating and electricity installations improvements
- Systems for buildings energy management systems
- Similar emission reduction measures

The sources of co-financing will vary. They may come from municipal budgets, credit lines from a public fund or from a commercial bank (in which case the bank will need to sign a declaration that the credit will not be reported as a green investment).

Based on the sale of the Contract AEAs, to be adjusted if Option AEAs are sold, the Program is expected to generate 1170 t CO₂/ year (or 35 100t for the project life of 30 years).

¹ <https://ecofund-bg.org/wp-content/uploads/2017/06/annex-1-Invitation-expression-of-interest-May-2015-latest.pdf>

² https://ecofund-bg.org/wp-content/uploads/2017/06/annex-2-Guide_-expression-of-interest-EE-May-2015-1-NatA.pdf

The figures are calculated based on the official information in the Sustainable Energy Development Agency for the last 5 years. Indexation is applied for the increase of the cost of the construction works generated in the National statistical institute of Bulgaria for the last two years.

Governance

The **National Trust EcoFund (NTEF)** was established in October 1995. The Fund manages assets from the state budget, including under the Debt-for-Environment and the Debt-for-Nature swaps.

In the past, the NTEF received some of its funding from the proceeds of the sale of Assigned Amount Units (AAUs) under the Kyoto Protocol. Proceeds from the sale of Annual Emission Allocation Units (AEAs) – received by _____ and transferred from there to the NTEF at 100% – is a new funding source. The NTEF also sources funds from the sale of greenhouse gas emissions quotas for aviation activities, as well as funds, provided by other environmental protection agreements between the Republic of Bulgaria and international or local financing sources.

The overall governance of the Program will be performed based on the legal regulations for the operations of NTEF – Art. 66 – 68 of the Environmental Protection Act, the Ordinance on the structure and activities of NTEF, Art. 67 (6) of the climate change mitigation Act, the Rules of Procedures of NTEF and the Operational Manual of the program.

The day-to-day operations will be implemented by the **Executive Bureau** and specifically by a program implementation team ("**Program Implementation Team**" or "**PIT**") consisting of at least three experts: technical expert on EE measures (to be responsible for the filed work with the project implementation and the technical reports), financial department representative (to be responsible for the review of the financial reports of beneficiaries) and a program coordinator specialized in international programs management (to serve as a liaison between NTEF, the Seller and the Buyer). The team reports to the Director of the Executive Bureau of NTEF.

The day-to-day operations will be funded through the assigned in the contract management budget to be used for following expenditures: staff cost of NTEF, involved in the implementation, control and support of the program, needed equipment (reported based on depreciation), travel expenses, overall maintenance of the office proportional to the other activities of NTEF, external expertise as needed, financial services, audits, other administrative costs and consumables, office vehicle maintenance proportionally to the other activities, publicity and communication expenses, equipment and expertise for the educational programs in the schools and kindergarten, any other costs in the administrative budget of NTEF proportionally to the other activities.

Monitoring

The monitoring and control of Program implementation is described in the ICP Operations Manual³ and is performed by the PIT under guidance from the Executive Bureau of NTEF. Specific procedures and methods for recording are applied for the different stages of project implementation as per the effective program regulations.

In addition, the results of the energy savings/ CO₂ reductions will be registered through the launched information system developed in the framework of a project funded by the European Climate Initiative's (EUKI's) project on "Municipal Energy Management For Sustainable Climate Financing". It will continue to collect and monitor the data also beyond that project's completion for at least five years.

Partners for the program implementation will be the Bulgarian Sustainable Energy Development Agency, Bulgarian Ministry of Education and Science, the National Association of Municipalities of Republic of Bulgaria (represented in the Managing Board of NTEF), the NGOs, who are partners of NTEF in the EUKI funded projects, other state agencies and NGOs.

Reporting

Each year the Executive Bureau will submit a progress report for the Program – as further defined below ("**Program Progress Reports**") – for review and endorsement by the NTEF Management Board. The reports will become part of the annual report of NTEF concerning the Umbrella Program submitted each year by the Managing Board to the Council of Ministers. Program-related information will feature in a separate section of the wider reports.

Program Progress Report ("PPR"). The PPR means a written report in a form as stipulated by the Agreement to be prepared and submitted in annual intervals by the Seller throughout the Implementation Window, setting out compliance information and projections, the use of Proceeds, relevant actions and/or events regarding Program implementation and operation since the last of such reports (see further **Annex II**).

Throughout the Implementation Window, the Seller shall inform the Buyer immediately in writing when:

- any material change in the implementation of the Program and/or in its laws occurs affecting the Program and/or the use of Proceeds occurs;
- whenever the Seller learns, or has reason to believe, that the Program or any operators or implementing partners is not compliant or risks not to be compliant with its obligations under the Agreement and/or under the Effort Sharing Decision and relevant EU or national legislation.

³ <https://ecofund-bg.org/wp-content/uploads/2017/12/Operativno-rakovodstvo-IPK-oct-2017-1-NatA.pdf>

Until two (2) years after the close of the Implementation Window, the Buyer may request access to all Program-related documents and records, including financial records; such access must be granted within one (1) month of a related request.

Procedure for the Buyer's information on compliance data and information on excess AEAs: Compliance Data and Information on Excess AEAs. The Seller shall keep the Buyer informed on the state of its ESD-inventory and compliance data; information on inventory data and AEA data made available to or from the European Commission shall be shared with the Buyer within two (2) week of submission or receipt.

Audit

The financial management of the Umbrella Program is performed based on the existing and applied procedures for internal and external financial control. Annual audit by internationally recognized auditor will be performed along with the overall audits of NTEF (publicly available).

The NTEF will ensure that throughout the Implementation Window (and including for the last year of implementation), independent annual financial audits and share the audit reports for the Program (separate or separable from the larger audit of the Umbrella Program) with the Buyer within one (1) week of completion of the relevant audit.

ANNEX II: Reporting Template for the Annual Reports

Introduction

- about the program
- about the stage of the program implementation

1. Progress of the program implementation

- Updated Operations Manual
- Expression of Interest to Applicants launched
- List of submitted applications
- Evaluation of proposals and selection

2. List of supported projects and specific measures

- Total costs and subsidy share
- Timeline for implementation and distribution of funds
- Monitoring of the construction works
- Calculation of tCO_{2e} reductions
- Monitoring and verification of CO₂ reductions

3. Economic and social effects (may be moved to Final Report, where appropriate)

- Financial savings in the schools and kindergarten
- How the financial savings are used
- How was the comfort increased for the children and the teachers and parents

4. Awareness effects of the program (may be moved to Final Report, where appropriate)

- How much are the savings due to the educational program
- What are the achievements, actions, results, publicity

5. Description and illustration of each particular project.

ANNEX III: Reporting Template for the Final Report

As ANNEX II (Progress Report) including the sections 3 and 4 and a summary description of all the measures implemented, outputs and impact achieved, as well as a complete financial report of the use of all AEA proceeds

