

UNEP/MOU/ECOSYSTEMS/2018/FLCB-LUFP/001

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED NATIONS ENVIRONMENT PROGRAMME (UN Environment)
AND
Andgreen.fund**

WHEREAS the United Nations Environment Programme (hereinafter referred to as “UN Environment”) is the leading organization within the United Nations system in the field of the environment and has as a major area of focus of its global mandate the conservation, protection, enhancement and support of nature and natural resources, including biological diversity, worldwide;

WHEREAS UN Environment serves as an authoritative advocate for the global environment to a wide range of stakeholders and partners through raising awareness and influencing attitudes, behavior and decisions in relation to the local and global environment through targeted initiatives for the sustainable management of landscapes resources, including agriculture, forestry, fisheries and other land and water uses;

WHEREAS *Stichting Andgreen.fund* (hereinafter referred to as “andgreen.fund”) is a not-for-profit private foundation established under the laws of the Netherlands and based in Amsterdam, the Netherlands, with the mission to prove that financing inclusive, sustainable and deforestation-free commodity production can be commercially viable and replicable, thus strengthening the case for a rural development paradigm that protects forests and peat lands and promotes high-productivity agriculture;

WHEREAS UN Environment and andgreen.fund (hereinafter collectively referred to as “Parties”) share common objectives with regard to the conservation, protection, enhancement, restoration and support of nature and natural resources, including biological diversity, , and recognize the importance of undertaking concerted actions in collaboration with the private sector and private and public financial institutions in order to build, replicate and scale financing structures that help decouple tropical commodity production from deforestation and drive social inclusion of communities in the production areas;

WHEREAS the Parties wish to conclude this Memorandum of Understanding (hereinafter referred to as “Memorandum of Understanding”) with the aim of consolidating, developing and detailing their cooperation and effectiveness to achieve their common objectives in the field of financing commercial projects promoting sustainable, inclusive tropical forest commodity production that help protect and restore natural forests and increase social inclusion and improve livelihoods of affected communities.

WHEREAS the purpose of this Memorandum of Understanding is to set forth the understandings and intentions of the Parties with regard to the promotion of integrated landscape management and restoration of degraded landscapes worldwide, as set out in Article 3 below;

WHEREAS, the cooperation between the Parties includes Project with the specific project objectives and design uses a GEF non-grant instrument which will result in the reflow of funds to the GEF Trust Fund from the andgreen.fund through UN Environment as per the 2014 GEF-6 Non-Grant Instrument Pilot and Updated Policy for Non-Grant Instruments.

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NOW, THEREFORE, UN ENVIRONMENT AND andgreen.fund HAVE AGREED TO COOPERATE UNDER THIS MEMORANDUM OF UNDERSTANDING AS FOLLOWS:

Article 1 Interpretation

1. References to this Memorandum of Understanding will be construed as including all its Annexes, as varied or amended in accordance with the terms of this Memorandum of Understanding. All such Annexes will be subject to the provisions of this Memorandum of Understanding, and in case of any inconsistency between any such Annex and this Memorandum of Understanding, the latter will prevail.
2. Implementation of any subsequent activities pursuant to this Memorandum of Understanding, including those involving the transfer of funds between the Parties, will necessitate the execution of appropriate legal instruments between the Parties. The terms of such legal instruments will be subject to the provisions of this Memorandum of Understanding.
3. This Memorandum of Understanding represents the complete understanding between the Parties and supersedes all prior Memorandum of Understandings, communications and representations, whether oral or written, concerning the areas of cooperation of this Memorandum of Understanding.
4. Either Party's failure to request implementation of a provision of this Memorandum of Understanding will not constitute a waiver of that or any other provision of this Memorandum of Understanding.

Article 2 Duration

1. This Memorandum of Understanding will be effective upon the last date of signature of the approving officials and shall remain in force unless terminated in accordance with Article 15 below.

Article 3 Purpose

1. The purpose of this Memorandum of Understanding is to provide a framework of cooperation and understanding, and to facilitate collaboration between the Parties to further their shared goals and objectives with regard to catalyzing private finance for sustainable agricultural commodity production decoupled from deforestation and to promote the protection and restoration of forests and peatland for the benefit of people, the climate, biodiversity, food and water security. This purpose will be pursued primarily through collaboration on channeling private finance into sustainable land use.
2. The objectives of this Memorandum of Understanding will be achieved through:
 - a. Regular dialogue and meetings between UN Environment and andgreen.fund.

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- b. If deemed necessary, execution of a separate legal instrument between the Parties to define and implement any subsequent activities, projects and programmes pursuant to Article 1.2.

Article 4 Areas of Cooperation

1. Areas of Cooperation are agreed jointly through the cooperation mechanism in the Memorandum of Understanding. Policies and priorities under this Memorandum of Understanding may also be jointly reviewed each year by the Parties pursuant to Article 5 to allow the Parties to respond to new and emerging issues in the realm of the environment and sustainable development.
2. The Parties have agreed to the following preliminary and overarching themes for this Memorandum of Understanding, which form part of UN Environment's mandate and programme of work, as approved by its governing body, and under which specific activities that the Parties could undertake have been identified. The themes and activities listed below are also ongoing activities of andgreen.fund, in accordance with its mandate. Action on the overarching themes could be strengthened through the cooperation of the Parties, including through the activities identified under each theme.
 - i. Collaborate to capitalize the *andgreen.fund*, which aims to provide innovative finance (junior subordinate loans, notes, credit guarantees or other forms of debt finance) to private sector parties (e.g. plantation companies, supply chain companies or financial intermediaries) that meet the fund's requirements. Potential *sources of funding* include the Global Environment Facility, but also other relevant sources of private and public capital.
 - ii. Seek to *maximise synergies and collaboration with other relevant finance facilities*, including but not limited to the Tropical Landscapes Finance Facility (TLFF), the Agri3 Fund, the GEF Good Growth Partnership (for which a separate Memorandum of Understanding is being put in place with all implementing agencies and andgreen.fund) and other relevant facilities and initiatives UN Environment is involved in, while at all times retaining the sole authority of the Parties' respective governance structures to determine how such collaboration should be implemented on a case-by-case basis.
 - iii. Identify areas of mutual interest to the parties including:
 - a. *Environmental and social (E&S) impact*. UN Environment's work under this area could include, *inter alia*: assisting more countries and jurisdictions meet the 'jurisdictional eligibility criteria' (JEC) of the andgreen.fund; exploring options for practical E&S key performance indicator monitoring & evaluation (M&E) tool in place, which can preferably be applied by other facilities and entities;
 - b. *Learning lessons*. UN Environment will aim at harvesting E&S lessons to further mainstream deforestation-free/sustainable land-use financing across the financial and agricultural sectors. UN Environment also expects to identify specific options for reform, including in relation to trade and fiscal policies, and to create a conducive enabling environment for deforestation-free, sustainable commodity production that includes smallholder farmers as much as possible in global agricultural value chains.

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- c. *Communication.* UN Environment's overall objective is to proactively unlock private capital for sustainable land use. The parties can work together to see novel projects financed by the the andgreen.fund effectively communicated to the broader finance and agricultural sectors to seek replication and impact beyond individual transactions.
 - d. *Enabling environment.* Ensure, through the regular exchange of lessons learnt, that UN Environment informs and increases awareness towards its member states about andgreen.fund and how these can help member states in their efforts to meet international agreements related to restoration (Bonn Challenge), climate change (Paris Climate Agreement) and biodiversity (Aichi Biodiversity Targets) and to improve the operating environment and the enabling environment for andgreen.fund investments.
- iv. Identify relevant options to increase the visibility of the Parties' activities during international and/or national events in order to advance the agendas of andgreen.fund and UN Environment.
3. The above list is not exhaustive and should not be taken to exclude or replace other forms of cooperation between the Parties on other issues of common interest. The conduct of joint activities will be subject to the availability of resources, and is on a non-exclusive basis.

Article 5 Organization of the Cooperation

1. The Parties will hold regular bilateral meetings on matters of common interest, in accordance with an agenda agreed to in advance by the Parties, for the purpose of developing and monitoring collaborative activities. Such meetings will take place at least once every four months to discuss technical and operational issues related to furthering the objectives of this Memorandum of Understanding.
2. Within the context defined above, further bilateral meetings at the desk-to-desk and expert levels will be encouraged and set up on an ad hoc basis as deemed necessary by the relevant UN Environment divisions and andgreen.fund to address matters of common interest for the implementation of activities in specific areas, countries and regions.
3. In implementing activities in the agreed priority areas, the Parties will execute a separate legal instrument appropriate for the implementation of such initiatives in accordance with Article 1.2 above. In identifying the areas of cooperation under this Memorandum of Understanding, due regard will be given to andgreen.fund's geographic coverage, capacity for implementation and experience in the relevant field.
4. Where andgreen.fund is organizing a meeting with external participation at which matters related to the aims of this Memorandum of Understanding will be discussed, andgreen.fund will, as appropriate, either invite UN Environment to participate in the meeting or update UN Environment on relevant policy matters discussed at the meeting. UN Environment will do the same, subject to its policies, rules and regulations, including those regarding stakeholder accreditation and the participation of stakeholders in UN Environment meetings. Each Party undertakes to share knowledge

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and information in its area of operations and expertise relevant to this Memorandum of Understanding with the other Party on a non-exclusive basis.

Article 6 Status of the Parties and their Personnel

1. The Parties acknowledge and agree that andgreen.fund is an entity separate and distinct from the United Nations, including UN Environment. The employees, personnel, representatives, agents, contractors or affiliates of andgreen.fund, including the personnel engaged by andgreen.fund for carrying out any of the project activities pursuant to this Memorandum of Understanding, will not be considered in any respect or for any purposes whatsoever as being employees, personnel, representatives, agents, contractors or affiliates of the United Nations, including UN Environment, nor will any employees, personnel, representatives, agents, contractors or affiliates of UN Environment be considered, in any respect or for any purposes whatsoever, as being employees, personnel, representatives, agents, contractors or affiliates of andgreen.fund.
2. Neither Party will be entitled to act or make legally binding declarations on behalf of the other Party. Nothing in this Memorandum of Understanding will be deemed to constitute a joint venture, agency, interest grouping or any other kind of formal business grouping or entity between the Parties.

Article 7 Fundraising

1. To the extent permitted by the Parties' respective regulations, rules and policies, and subject to Article 7.2, the Parties may engage in fundraising from the public and private sectors to support the activities to be developed or carried out pursuant to this Memorandum of Understanding.
2. Neither Party will engage in fundraising with third parties in the name of or on behalf of the other without the prior express written approval of the other Party in each case.

Article 8 Intellectual Property Rights

1. Nothing in the Memorandum of Understanding will be construed as one Party granting its rights to, or interest in, intellectual property to the other Party, except as otherwise provided in Article 8.2.
2. In the event that the Parties foresee that intellectual property that could be protected will be created in relation to a particular activity to be carried out under this Memorandum of Understanding, one Party to be agreed on by both shall own the intellectual property and give the other Party a non-exclusive, non-assignable worldwide license to use the intellectual property or any portion thereof for its official purposes. Intellectual property ownership can alternate between the Parties for different activities to be carried out under this Memorandum of Understanding.

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Article 9 Use of Name and Emblem

1. Neither Party will use the name, emblem or trademarks of the other Party, its subsidiaries and/or affiliates, or any abbreviation thereof, in connection with its business or for public dissemination without the prior express written approval of the other Party in each case. In no event will authorization of the UN or UN Environment name or emblem be granted for commercial purposes.
2. andgreen.fund acknowledges that it is familiar with the independent, international and impartial status of the UN and UN Environment, and recognizes that their names and emblems may not be associated with any political or sectarian cause or otherwise used in a manner inconsistent with the status of the UN and UN Environment.
3. The Parties agree to recognize and acknowledge this partnership, as appropriate. To this end, the Parties will consult with each other concerning the manner and form of such recognition and acknowledgement.

Article 10 United Nations Privileges and Immunities

1. Nothing in or relating to this Memorandum of Understanding will be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UN Environment.

Article 11 Confidentiality

1. The handling of information will be subject to each Party's corporate confidentiality policies. This may include the sharing of proprietary information, which is not to be disclosed to any 3rd party without the prior written consent of the other party.
2. Before disclosing internal documents, or documents that by virtue of their content or the circumstances of their creation or communication must be deemed confidential, of the other Party to third parties, each Party will obtain the express, written consent of the other Party. However, a Party's disclosure of another Party's internal and/or confidential documents to an entity that the disclosing Party controls or with which it is under common control, or to an entity with which it has a confidentiality agreement, will not be considered a disclosure to a third party and will not require prior authorization.
3. For UN Environment, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations will be deemed to be a legal entity under common control.

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**Article 12
Responsibility**

1. Each Party will be responsible for dealing with any claims or demands arising out of its actions or omissions, and those of its respective personnel, in relation to this Memorandum of Understanding.

**Article 13
Dispute Settlement**

1. The Parties will use their best efforts to settle amicably any dispute, controversy or claim arising out of this Memorandum of Understanding. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation will take place in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules then prevailing, or according to such other procedure as may be agreed between the Parties.
2. Any dispute, controversy or claim between the Parties arising out of this Memorandum of Understanding which is not settled amicably in accordance with the foregoing sub-article may be referred by either Party to arbitration under the UNCITRAL Arbitration Rules then in force. The arbitral tribunal will have no authority to award punitive damages. The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

**Article 14
Notification and Amendments**

1. Each Party will promptly notify the other in writing of any anticipated or actual material changes that could be expected to affect the execution of this Memorandum of Understanding.
2. The Parties may amend this Memorandum of Understanding by mutual written agreement, which will be appended to this Memorandum of Understanding and become an integral part of it.

**Article 15
Termination**

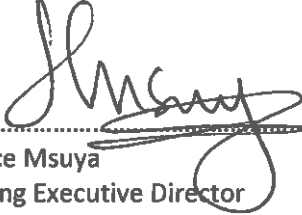
1. Either Party may terminate this Memorandum of Understanding by giving two (2) months' prior written notice to the other Party.
2. Upon termination of this Memorandum of Understanding, the rights and obligations of the Parties defined under any other legal instrument executed pursuant to this Memorandum of Understanding will cease to be effective, except as otherwise provided in this Memorandum of Understanding.
3. Any termination of the Memorandum of Understanding will be without prejudice to (a) the orderly completion of any ongoing collaborative activity and (b) any other rights and obligations of the Parties accrued prior to the date of termination under this Memorandum of Understanding or legal instrument executed pursuant to this Memorandum of Understanding.

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4. The obligations under Articles 8-13 do not lapse upon the expiry or termination of this Memorandum of Understanding.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties affix their signatures below.

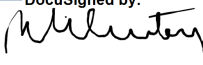
For United Nations Environment Programme



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Joyce Msuya
Acting Executive Director
UN Environment

Date: 03/12/2018

For andgreen.fund

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Nanno Kleiterp
Chairman
Board of Directors
andgreen.fund

Date:

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Joost Oorthuizen
Member
Board of Directors

Date: