

Subgrant Agreement

The Parties to this Subgrant Agreement are

Climate Analytics gGmbH

Friedrichstr 231, 10969 Berlin, Germany

(First Recipient)

and

Secretariat of the Pacific Regional Environment Programme (SPREP)

PO Box 240, Apia, Samoa

 *OIC.*

(Subgrantee)

27/10/16

The Parties have agreed as follows:

1. Definitions

- a. **Project** means "16_II_148_Global_A_Impact" described in the Project Proposal.
- b. **Project Budget** means the budget contained in the Project Proposal.
- c. **First Recipient** means the organisation which initially receives the grant from the Grant Donor for the implementation of the Project.
- d. **Subgrantee** means the organisation which receives parts of the grant for the implementation of certain specified parts of the Project.
- e. **Grant Donor** means the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety.
- f. **Advance payment** means a Subgrant instalment paid in advance by the *First Recipient* to defray the anticipated Project costs of the *Subgrantee* for a future period.
- g. **Cooperation Agreement** means a separate agreement stipulating further details on the distribution of tasks between the First Recipient and the Subgrantee regarding the Project implementation.
- h. **Fixed-sum financing mode** means that the First Recipient provides a fixed amount (the "Subgrant") to the Subgrantee as part of the total eligible expenditure, according to the Project Budget and regardless of the increase or decrease of the total eligible expenditure for the Subgrantee's contribution at the end of the Project.
- i. **Financial Report** means an overview of any expenditure incurred by the Subgrantee, including own and third party funds if applicable.
- j. **Narrative Report** means a written report on the operation and progress of the Subgrantee's contribution to the Project.
- k. **Final Report** means a Financial Report as well as a Narrative Report covering the whole Project duration.

1. **Significant deviation** means a material variance from the Project Proposal, in so far as the contribution of the Subgrantee is concerned, which might affect the objectives of the Project or the adequate use of the Subgrant, regardless of the cause, e.g. changes in outcome and/or output level, changes to the respective indicators or to crucial activities.

2. Subgrant provisions

- a. Subject to the provisions of this Subgrant Agreement, the First Recipient will make available to the Subgrantee a non-refundable voluntary Subgrant of up to EUR 515.715,00 (five hundreds fifteen thousand and seven hundred fifteen euros) for the purpose of implementing a specified part of the Project.
- b. First Recipient and Subgrantee will conclude a Cooperation Agreement. One copy of this agreement must be sent to the Grant Donor for information purposes.
- c. The duration of the Project will be from October 1, 2016 to September 30, 2019.
- d. The Subgrant will be made available in the fixed-sum financing mode. The Subgrant must only be used to cover expenditures necessarily incurred if the intended purpose of the Subgrant is to be achieved. Only expenditures paid and borne by the Subgrantee are eligible to be financed or co-financed by the Subgrant. These expenditures must be proven by delivery of works, services or supplies, original receipts/invoices, or proof of payment and must not include a profit-margin for the Subgrantee.
- e. The Subgrant must be used economically while taking into account the principles of efficiency and effectiveness. The Subgrant must not be used to create reserves.
- f. The Subgrant is allocated to the budgetary years as follows:

2016	EUR	0
2017	EUR	170.212,00
2018	EUR	171.013,00
2019	EUR	174.490,00

- g. The Subgrant or instalments thereof will be disbursed upon request. The First Recipient provides the Subgrantee with a suitable template "Request of funds." Each disbursed part of the Subgrant must be used within 6 (six) weeks after disbursement from the First Recipient to the Subgrantee.
- h. The Subgrantee may only agree to or effect payments prior to completion of the relevant service or purchase where this is customary or justified due to special circumstances.
- i. The Subgrantee bears the risk of exchange rate fluctuations. Revenue generated by positive development in exchange rates must be used for the Project and will be deducted from the total Subgrant.
- j. The Subgrantee must use a generally accepted accounting system.
- k. The Subgrantee must keep a Project-specific account so that all Project-related income and expense flows are identifiable and attributable.
- l. The Subgrant or instalments thereof will be transferred to the following bank account:

Account holder: SPREP USD Working Account

Bank: BSP (Samoa) Limited

IBAN/Account no.: 01-849599-07

BIC/Swift no.: BOFAUS3N

Reference (optional): Climate Analytics Sub grant

3. Crucial Project activities

The following activities of the Subgrantee are considered crucial for the Subgrantee's contribution to the Project:

- a. As a regional implementing partner, SPREP is responsible for the regional co-development anchored within Output II (Regional impacts, adaptation options, costs and loss & damage) as well as facilitating and channelling implementation activities within Output IV (National Implementation). A core function of SPREP is to embed regional knowledge into the project, ensuring that activities conducted in the IMPACT project are complementary to existing strategies, frameworks and

information as well as ensuring regional ownership and application of project results. SPREP hosts a Climate Analytics scientist over the course of the project duration and supports the development of the analysis framework in Output II through facilitating access to existing data and databases. SPREP also ensures the regional exchange as relevant for all Outputs by coordinating exchange with countries in the region and supporting the organisation of workshops.

- b. Work package (WP II) Regional impacts, adaptation options, costs and residual impacts: joint implementation with other partners
- c. Work package (WP III) Climate Finance for Implementation: joint implementation with other project partners
- d. Work package (WP IV) Implementation Strategies and Capacity Building: joint implementation. Organise one Workshop per year in the West Africa for regional experts
- e. Work package (WP V) International Implementation: Organise one Capacity Building Meeting for Ministers and high-level officials per year in the Pacific,

4. Obligations of the Subgrantee

The Subgrantee accepts this Subgrant and agrees

- a. to contribute to the Project in the way, to the extent and within the time-frame specified in the Project Proposal, the Project Budget and the Cooperation Agreement;
- b. to use the Subgrant, the Subgrantee's own resources and any contribution granted by third parties, according to the Project Proposal, the Project Budget, and the Cooperation Agreement and exclusively for the purposes set out therein;
- c. to reimburse without delay upon request
 - i. the unused parts of the claimed Subgrant to which the Subgrantee is not entitled according to this Subgrant Agreement as soon as the overpayment becomes apparent;

- ii. the Subgrant or parts thereof if they are not used in accordance with the objectives of the Project or if other provisions of the present Subgrant Agreement have been infringed;
 - iii. any interest accrued by the Subgrantee on the Subgrant.
- d. that reimbursable parts of the Subgrant are subject to an annual interest rate of 5 (five) percentage points above the base rate of the European Central Bank. This provision is not applicable to erroneous overpayments from the First Recipient.
- e. to pay interest at a rate of 5 (five) percentage points above the base rate of the European Central Bank p.a. for any amount not spent for eligible Project-related expenditures within 6 (six) weeks after disbursement according to Paragraph 2 lit g.
- f. to submit to the First Recipient annually an Interim Financial and Narrative Report according to the following schedule:

Date	Financial Report	Narrative Report	Reporting period
February 28, 2017	N/A	N/A	start of Project - 31/12/2016
February 28, 2018	X	X	1/1/2017-31/12/2017
February 28, 2019	X	X	1/1/2018-31/12/2018
February 29, 2020	X	X	1/1/2019-30/09/2019

- g. to submit to the First Recipient within 3 (three) months after completion of the Project, latest by December 31, 2019, the Final Report;
- h. to draft all reports in the language of the Subgrant Agreement using templates provided on the website of the International Climate Initiative (IKI); <http://www.international-climate-initiative.com/en/project-promotion/reporting/>;
- i. to confirm in its Final Report that
- i. all financial transactions have been made in accordance with the Project Proposal, the Project Budget and the intended purpose of the Subgrant;
 - ii. the Subgrant was examined in accordance with comprehensive internal control procedures on the basis of the financial regulations, rules and directives currently applicable to the Subgrantee;

- j. to use any item and asset purchased or produced using the Grant for the purpose of the Project during the Project duration. Items and assets with an original value of EUR 410 (net) and above must be listed on an inventory list. The inventory list must be submitted to the First Recipient 4 (four) months before the end of the Project.
- k. that the Subgrantee may dispose freely of any item or asset with an original value below EUR 410 (net) after the end of the Project. Items and assets on the inventory list must be transferred to the First Recipient;
- l. to seek prior agreement with the First Recipient if the Subgrantee intends to use any of the items or assets purchased or produced using the Subgrant within the duration of the Project for a purpose different from the Project purpose;
- m. to keep the original receipts (receipts for income and expenditure) for the individual payments and the agreements concerning the awarding of contracts as well as all other documents relating to the Subgrant for 5 (five) years after submission of the Final Report, unless a longer compulsory period of record-keeping is stipulated by the tax laws or other legal provisions applicable to the Subgrantee;
- n. to inform the First Recipient without delay and in writing of:
 - i. any additional funding the Subgrantee applies for or receives for its contribution to the Project after this Subgrant Agreement has entered into force;
 - ii. any Significant Deviation from or changes to the Subgrantee's contribution to the implementation of the Project Proposal;
 - iii. the inability to utilize the claimed or disbursed Subgrant for due payments within 6 (six) weeks after disbursement pursuant to para. 2 lit. g.;
 - iv. bankruptcy or similar proceedings which have been applied for or initiated against the property of the Subgrantee;
 - v. any circumstances which prevent that the Subgrant or parts thereof can be used for the intended purpose;

5. Further obligations of the Subgrantee

- a. The Subgrantee grants the First Recipient and the Grant Donor an unrestricted, transferable non-exclusive right of use with respect to all intellectual property and other proprietary rights including, but not limited to, copyrights, patents, trademarks and ownership of data resulting from the Project.
- b. The Subgrantee must indemnify and hold harmless the First Recipient and the Grant Donor for and against any and all claims, lawsuits, damages and expenditures which the First Recipient and the Grant Donor may sustain or which may be brought against the First Recipient and the Grant Donor in connection with the Subgrantee's actions or omissions in the performance of this Subgrant Agreement.
- c. The Subgrantee undertakes that, at the date of the entering into force of the Subgrant Agreement, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Subgrant Agreement and that the Subgrantee has taken reasonable measures to prevent subcontractors, agents or any other third parties subject to its control or determining influence from doing so.
- d. The Subgrantee will abide by the highest ethical standards in carrying out this Agreement. This includes not engaging in any discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child.

6. Procurement

- a. The Subgrantee understands that any procurement required for the Project must be acquired through public tender pursuant to the general regulations, rules and directives of the Subgrantee.
- b. In case that no general regulations, rules and directives of the Subgrantee exist, the following stipulations apply:

- i. for procurements with an estimated value not exceeding EUR 1,000 (net), no comparative offer is needed, provided the economic efficiency of the commercial goods or services can be assessed without any difficulties;
- ii. for procurements with an estimated value not exceeding EUR 5,000 (net), the Subgrantee must collect at least three offers for comparison. As a general rule, the contract should be awarded to the most economical tender; the Subgrantee must document that the correct procedure has been followed;
- iii. for procurements with an estimated value exceeding EUR 5,000 (net), at least three comparative offers in writing must be collected. As a general rule, the contract should be awarded to the most economical tender; the Subgrantee must document that the correct procedure has been followed.

7. Breach of Agreement and Termination

- a. The First Recipient reserves the right to withhold or reclaim payment of the funds or parts thereof, in particular if
 - i. the Subgrant is not or no longer being used for the intended purpose of the Project;
 - ii. it becomes apparent that the intended purpose of the Project or the Subgrantee's contribution hereto cannot be achieved with the approved funds or at all;
 - iii. circumstances arise which alter or nullify the intended purpose of the Project or the Subgrantee's contribution hereto;
 - iv. the Subgrant funds are not used for the intended purpose within six weeks after disbursement;
 - v. items or assets purchased or produced using the Subgrant are no longer used for the intended purpose without prior agreement with the First Recipient;
 - vi. stipulations made by the First Recipient cannot be met or cannot be met within the set period, in particular the timely submission of the required

reports and the disclosure requirements set forth in para. 4 lit. n. of the present Subgrant Agreement;

- b. The First Recipient may terminate the Subgrant Agreement without prior notification and without compensation of any kind, if the Subgrantee
- i. fails, without justification, to fulfil any of its obligations and, after given notice by letter to comply with these obligations, still fails to do so or to provide a satisfactory explanation within 30 (thirty) days of sending of the letter;
 - ii. is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is subject to proceedings concerning these matters or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - iii. has been convicted of an offence concerning professional conduct by a judgement which has the force of res judicata or is guilty of grave professional misconduct, including the stipulation under para. 5 lit. c., proven by any justified means;
 - iv. engages in any act of fraud or corruption or is involved in a criminal organisation or any other illegal activity detrimental to the First Recipient's financial interest: this also applies to the partners, subcontractors and agents of the Subgrantee;
 - v. changes legal personality, unless an addendum to this Subgrant Agreement recording this fact is drawn up;
 - vi. does not comply with para. 4 lit m. and para. 9 (financial bookkeeping, assignment);
 - vii. makes false or incomplete statements to obtain the Subgrant or provides reports that do not reflect reality.
- c. In the event of termination, the Subgrantee is entitled to receive Subgrant payments only for the part of its contribution which has been carried out, excluding expenditures connected with current commitments which would be implemented after the termination date. In order to receive payment, the Subgrantee must submit

a payment request and a Final Report in accordance with Paragraph 4 lit. g. (reporting).

- d. Prior to, or instead of terminating the Subgrant Agreement as provided for in this Paragraph, the First Recipient may suspend payments as a precautionary measure without prior notice.

8. Reclaim procedure

The following procedural stipulations apply if the First Recipient is entitled to reclaim the Subgrant or parts thereof, or interest of any kind.

- a. The First Recipient will issue a formal notification to the Subgrantee, informing it of the First Recipient's intention to reclaim, the due amount, and a justification and inviting the Subgrantee to submit explanations within 30 days of receiving notification. If no explanations are submitted or the First Recipient decides to reclaim the amount despite the explanations it has received, it will confirm the amount to be recovered and formally issue the Subgrantee a debit note. This note will also specify the terms and the date for payment.
- b. If payment is not made by the date specified in the debit note, the First Recipient will recover the amount by offsetting it — without the Subgrantee's consent — against any amounts owed to the Subgrantee by the First Recipient.
- c. If payment is not made by the date in the debit note, the due amount will be increased by late payment interest of 5 (five) percentage points above the base rate of the European Central Bank p.a. from the day following the payment date stipulated in the debit note up to and including the date the First Recipient receives full payment of the amount.
- d. Partial payments will be first credited against expenses, charges and late payment interest and then against the principal.

9. Assignment

The Subgrant Agreement and the payments attached to it may not be assigned to a third party in any manner whatsoever without prior written consent of the First Recipient.

10. Other provisions

- a. In all publications relating to Projects within the International Climate Initiative, it must be indicated that the Project is supported by the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety.
- b. This Subgrant Agreement may only be amended by written agreement between the First Recipient and the Subgrantee.
- c. In the event of a provision of this Subgrant Agreement being invalid, this will neither affect the validity of the remaining provisions nor the Agreement in total. Any deficiency in consequence thereof will be remedied by a provision consistent with the purpose and intent of this Subgrant Agreement.

11. Arbitration

The First Recipient and the Subgrantee undertake to settle any dispute, controversy or claim arising from or relating to this Subgrant Agreement, as well as issues concerning the breach, termination or invalidity thereof, by direct negotiation.

Should this not lead to a settlement, the dispute shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as currently in force. The First Recipient and the Subgrantee declare their willingness to be bound by any award passed by the arbitral tribunal in accordance with the Rules mentioned in this paragraph, without seeking recourse to the ordinary courts of law. The arbitral tribunal may not be authorized to impose penal damages. An arbitrator will be appointed. The appointing authority within the meaning of the UNCITRAL Arbitration Rules is the German Institution of Arbitration (DIS). The arbitration procedure will begin when the action is delivered to a DIS office.

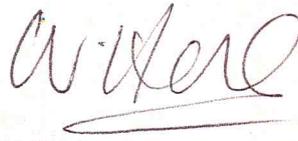
12. Entry into force

- a. This Subgrant Agreement will enter into force upon signature by both parties.
- b. The Subgrant is made available once the Subgrant Agreement has entered into force.

EXECUTED by the parties as a deed

Executed by Bill Hare
CEO
Climate Analytics gGmbH

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for and on behalf of the *First Recipient*

Berlin

Place

28 October 2016

Date

Executed by

STUART CHAPE
OIC

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for and on behalf of the *Subgrantee*

APA, SAMOA

Place

28/10/16

Date

