



## **PROTOCOL FOR REVIEW, ASSESSMENT AND DECISION ON GOBI OYU DSF PROPOSALS**

### **1. PURPOSE**

- 1.1. This Protocol is consistent with the principles outlined in the Cooperation Agreement signed between Umnugobi Aimag (UM), Khanbogd soum, Partner Communities and Oyu Tolgoi LLC on April 22, 2015 and the Charter of the Gobi Oyu Development Support Fund (Gobi Oyu DSF or the DSF) and aims to set out the process for planning, submission, assessment and decision making on DSF Proposals. DSF Proposal is defined in the Cooperation Agreement as “a proposal for a Program or a Project submitted to the DSF”.
- 1.2. This Protocol is intended to support:
  - 1.2.1. the Cooperation Agreement governance framework applicable to all stakeholders;
  - 1.2.2. effective coordination and efficient communication between the Relationship Committee (the RC), the Relationship Committee Secretary (the RC Secretary) on the one hand, and the DSF Board, Custodial Trustee and the Executive Director (the ED) of the Gobi Oyu DSF on the other; and
  - 1.2.3. Drive an efficient process for approving funding for Projects and Programs.
- 1.3. The DSF Board, the RC, the ED, Custodial trustee and the RC Secretary of the “Gobi Oyu” DSF agree to comply with this Protocol in their planning, review and assessment and decision making relating to DSF Proposals.

### **2. PROCEDURE TO IMPLEMENT SOCIAL INFRASTRUCTURE AND CAPITAL PROJECT**

#### **2.1 RECEIPT OF PROJECT PROPOSALS REQUIRED TO IMPLEMENT AND SITUATIONAL ANALYSIS**

- DSF will receive social infrastructure and capital project proposals from Aimag governor’s office once in a year within 15<sup>th</sup> July of each calendar year.
- Aimag governor’s office deliver two types of social infrastructure project proposals by filling out DSF project and program form and their integrated lists; project proposals that require developing engineering drawing and social infrastructure project proposals with approved engineering drawing.
- Aimag governor’s office shall submit comprehensive social infrastructure project proposals that have management and equipment costs in its budget estimation and sustainability plan and shall be based on the need, recommendation and

request of local community, NGOs, and enterprises and Aimag governor's office will deliver proof and rationale of the needs, recommendation and request to the DSF.

- DSF will evaluate project proposals against DSF Charter, Funding guideline and other related operational documents and present the project proposals and their integrated lists to the Relationship Committee within 14 days after receiving them from the Aimag governor's office

## 2.2 RELATIONSHIP COMMITTEE AND FUND BOARD MEETING DECISION, INFORMING ABOUT THE DECISION, FORMING EVALUATION COMMITTEE AND MAKING FINAL DECISION

- Relationship Committee will evaluate and provide recommendation on the project proposals received from Aimag governor's office and make two types of prioritization lists; project proposal that require developing engineering drawing and project proposals that have approved engineering drawing.
- Fund Board will support project proposals along with their funding by taking Relationship Committee prioritization lists and recommendations in consideration.
- Social infrastructure and capital project proposals that have approved engineering drawing will be delivered to tender/procurement phase and Aimag governor's office will organize tender/procurement. Aimag governor's office will form Evaluation Committee for the social infrastructure and capital project proposals that require developing engineering drawing by involving specialized organization and individual in the field.
- DSF will deliver notice to the Aimag governor's office if the proposal was unsupported by the Fund Board.
- Evaluation Committee will develop first draft of the technical terms and budget estimation for the social infrastructure project proposal that require developing engineering drawing and deliver them to the DSF.
- DSF will deliver the first draft of the technical terms and budget estimation and present to Fund Board and Relationship Committee and receive their recommendation within 14 days and deliver integrated recommendation to Evaluation Committee.
- If the Parties did not provide written recommendation within the specified date, or if the Parties provided verbal recommendation, the recommendation will not be considered as a recommendation.
- Evaluation Committee will finalize the technical terms and budget estimation based on the recommendation provided from the Parties and prepare for tender/procurement.

### 2.3 ORGANIZING TENDER, EXECUTION OF FUNDING AGREEMENT, PROJECT IMPLEMENTATION, MONITORING AND PROJECT CLOSURE

- Aimag governor's office will organize tender according to related laws and regulations and within the approved budget and finalized technical terms and determine Owner of the project and deliver a copy of the agreement and official letter 7 days after executing agreement with the selected Contractor.
- DSF will execute funding agreement with the Owner and the Contractor based on the official letter and agreement delivered from Aimag governor's office and commences project implementation.
- Funding agreement will be executed within 14 days. If necessary, this duration can be extended. (For additional documents related permit. Etc.)
- Owner and the Financing Entity and their representatives will monitor project implementation at any phase of the project implementation in accordance with the Fund Monitoring and Evaluation guideline
- Owner and the operating organization will maintain the project sustainability as specified in the project proposal.

### 3. PROCEDURE TO IMPLEMENT SOCIAL SUSTAINABLE DEVELOPMENT PROGRAM

3.1 Gobi oyu development support fund will determine its priority areas to be adhered from the Thematic Schedules of Cooperation Agreement once in three years. In order to determine 3 year priority areas, DSF will organize workshop by involving representatives from Aimag local administrative organization, local community, civil societal organizations, NGOs, and enterprises. DSF will finalize 3 year priority areas by aligning the workshop results with aimag and soum development plan, Cooperation Agreement, Fund Charter, Funding guideline and other related operational documents and present to Relationship Committee and get endorsement from the Board.

3.2 DSF will develop annual action plan and budget forecast in order to implement the approved 3 year priority areas and get endorsement by presenting to Relationship Committee and the Fund Board. DSF will select priority areas from the approved 3 year priority areas to be implemented each year and reflect budget forecast for each selected priority areas and also develop general allocation of annual Fund resource.

### 3.3 FORM EVALUATION COMMITTEE, DEVELOP TERMS OF REFERENCE, CALL FOR PROPOSAL AND RECEIVE PROPOSALS

- Aimag governor's office will form Evaluation Committee by taking the annual action plan in consideration and by involving specialists from related specialized organizations and individuals.

- Evaluation Committee will develop first draft of terms of reference and budget estimation by aligning with the approved budget and annual action plan and deliver them to DSF.
- DSF will deliver the first draft of the terms of reference and budget estimation and present to Fund Board and Relationship Committee and receive their recommendation within 14 days and deliver integrated recommendation to Evaluation Committee.
- If the Parties did not provide written recommendation within the specified date, or if the Parties provided verbal recommendation, the recommendation will not be considered as a recommendation.
- Evaluation Committee will finalize the terms of reference and budget estimation based on the recommendation provided from the Parties and call for proposal. Evaluation Committee will then deliver the received proposals and recommendation to DSF after reviewing them against approved terms of reference and budget estimation.
- Evaluation Committee will receive proposal according to DSF project and program form.

#### 3.4 RELATIONSHIP COMMITTEE AND BOARD MEETING DECISION AND INFORMING OF THE DECISION

- DSF will present the proposals and recommendation delivered from the Evaluation Committee to Relationship Committee for prioritization.
- Board will make funding decision and select program Implementer by taking Relationship Committee prioritization and recommendation into account.
- DSF will inform Board meeting decision to the proposal initiator.

#### 3.5 EXECUTION OF FUNDING AGREEMENT, PROGRAM IMPLEMENTATION, MONITORING AND PROGRAM CLOSURE

- Aimag governor's office will define program Owner and the Owner will execute agreement with the selected Implementer within the terms of reference and approved budget and deliver a copy of the agreement and official letter to DSF within 7 days after executing the agreement.
- DSF will execute funding agreement with the Owner and the Implementer based on the official letter and agreement delivered from Aimag governor's office and commences project implementation.
- Funding agreement will be executed within 14 days. If necessary, this duration can be extended. (For additional documents related permit. Etc. ) Owner and the Financing Entity and their representatives will monitor project implementation at any phase of the project implementation in accordance with the Fund Monitoring and Evaluation guideline

- Owner will maintain the program sustainability as specified in the project proposal.

#### 4. RELATIONSHIP COMMITTEE REVIEW OF DSF PROPOSALS

4.1. Upon receipt of DSF Proposals from the ED , the RC Secretary will:

- Provide copies of DSF Proposals (with a relevant notice, and agenda) to all members of the RC within 7 days of their receipt;
- Support the RC to obtain Additional Advice from appropriate persons;
- Support the RC to communicate with the ED and the Board through ED regarding DSF Proposals;
- Maintain all official records, correspondence, all documents and supporting materials relating to the DSF Proposals;
- Keep all documents and communications in relation to the DSF Proposals and any other documents/communications in a safe place;
- Effectively and timely liaise with the ED and all members of the RC

4.2 The RC Secretary shall:

- Organize meetings, before and after the RC meetings, to inform relevant Working Groups and local communities of the matters under discussion at RC meetings;
- Arrange meetings and forums for the RC members;
- Prepare and distribute minutes of the RC meetings;
- Liaise with and send prioritized DSF Proposals (RC recommendations) to the ED for developing or updating the 3 year plan and 5 year strategy (the Plans);

4.3 Provided that DSF Proposals have been registered by the ED and are submitted to the RC (through the RC Secretary) the RC Secretary has no right to seek or request additional material, data, information in relation to or re-submittal of the DSF Proposal without an explicit consent given by the RC.

#### 5. The RC Recommendation

If the DSF Proposal is a Project Proposal, upon completion of the review of the Project Proposal, the RC will submit its recommendations to the DSF Board through the ED and the RC recommendations will include the following content (among other things):

Project identification	Duration	Total cost estimates	Funding amount required from the Gobi Oyu DSF	Sustainable Benefits arising from the Project	Management of the Project	Key milestones for execution and development	Recommendation

RC recommendations will be signed off by both Chairpersons of the RC.

## **6. EXECUTIVE DIRECTOR'S ROLE IN PLANNING AND BOARD MEETING PREPARATION**

The ED will provide or make necessary changes to the 3 year rolling plan in view of the RC recommendations and present them to the Board for its approval. At the same time, the ED will provide an agenda of the Board meeting to all members of the Board and the Custodial Trustee. The ED, following the Board decisions on DSF Proposals will update the Plans as necessary and required. Having updated the Plans the ED will submit the Plans to all of the RC members, the Board and the Custodial Trustee.

## **7. REVIEW AND DECISION MAKING ON DSF PROPOSALS BY THE BOARD**

### **7.1. The DSF Board review of DSF Proposals**

- a) The Board will exercise an informed judgment with respect to making decisions on the DSF Proposal and take into consideration the RC recommendations (and the ED's assessment and recommendations), in addition to its Funding Guideline and the Plans.
- b) The Board, at any time during the review of the DSF Proposals, may request the RC to obtain or provide an Additional Advice (Additional Advice) to assist in its decision as to whether to approve the DSF Proposal. The Additional Advice sought or requested by the Board will be in writing and will indicate a reasonable time period for obtaining the Additional Advice.

### **7.2 No approval of DSF Proposals by the DSF Board**

- a) If a DSF Proposal is not approved by the DSF Board, the DSF Proposal may be returned to the RC for re-consideration or refinement. The RC may submit the DSF Proposal to the Board for consideration a second time at the next Board meeting. (Second Board Meeting)
- b) At the second Board Meeting the DSF Proposal may be approved by a simple majority vote of the Board members in accordance with the Cooperation Agreement.
- c) The second submission of the DSF Proposals to the DSF Board by the RC may be made if all clarifications and questions are addressed and relevant advice has been obtained. A second submission will be delivered to the ED (in his absence to the DSF Secretariat) 14 days before the next scheduled meeting of the Board.
- d) The Board is not obliged to approval a second submission of a DSF Proposal.
- e) The DSF Proposal shall be deemed not approved if it is rejected by the Board and no second submission is made.

### **7.3 Custodial Trustee's role in review and assessment of DSF Proposals**

- a) As requested by the DSF Board, the Custodial Trustee may be asked to review DSF Proposals in relation to tax, finance, legal compliance and governance perspectives and advise the Board (through the Chairperson) if there exists or may potentially arise any legal, tax, governance and financial risks in relation to the DSF Project Proposals before any decision is made by the DSF Board.
- b) The Custodial Trustee shall ensure that decisions of the Board on DSF Proposals are made objectively and on-an-informed basis, without breaking laws, regulatory requirements and ethical standards, with adequate consideration of the Funding Criteria and in accordance with the Cooperation Agreement and the DSF's Charter, policies and procedures.
- c) Once all reviews are made and DSF Proposals are properly approved by the DSF Board, the Custodial Trustee will co-authorize disbursements from the Gobi Oyu DSF according to the DSF Board's decisions.

### **7.4 Procedure for selecting priority DSF proposals within the financial resource allocated to Target Soums**

The process of selecting priority DSF proposals within the financial resource allocated to the Target Soums shall be governed by the Funding guideline, this protocol and in accordance with the following steps:

- a) Target Soum governor's office shall receive DSF proposals according to the approved DSF project and program proposal receiving form.
- b) Working group comprising of representatives of Citizens Representatives Khural, Governor's office of the Target Soum, non-governmental organizations operating in the Target Soum and community members established by the resolution of the Leaders of Citizens Representatives Khural shall prioritize the received DSF proposals.
- c) Working group with 5 members comprising of the Target Soum head of Citizens Representatives Khural, Governor, representatives of Gobi Oyu DSF and non-governmental organizations operating in the Target Soum shall approve prioritized DSF proposals within the financial resource allocated to the Target Soum and deliver its recommendations for funding to the DSF Executive director.
- d) The DSF Executive director shall receive documents related to the selected DSF proposals and present to the Fund Board if necessary; if not, deliver notice to the Target Soum Governor to select contractor for the selected DSF proposals.
- e) Governor of the Target Soum shall execute a contract with the contractor to implement the selected DSF proposal as the Owner of the proposal and deliver a copy of the executed contract to the DSF. Based on this contract, the DSF, the Target Soum Governor and the contractor to implement the selected DSF proposal will enter into a tri-party funding support agreement.

f) Owner or the target soum governor's office will monitor project or program implementation and the DSF will provide funding based on the warranty/official letter provided by the Owner.

g) Allocated resource, remaining resource allocation, tender savings for the Target Soum will be reserved in the DSF bank account and the reserved resource will be added to the resource allocated in the following year. The DSF shall provide report on all projects and programs financed and implemented in the Target Soums to the DSF Board and Relationship Committee.

## **8. ADDITIONAL ADVICE**

The RC may engage a member/s of the local community, independent professional consultant or advisor, or other third party for Additional Advice as it sees fit. The DSF Board shall not be responsible for the costs of any Additional Advice procured by the RC, unless it has previously agreed in writing to contribute to the costs.

## **9. FINAL PROVISIONS**

- a) Unless provided otherwise, words and expressions used in this document have the meaning ascribed to it by the Cooperation Agreement.
- b) This Protocol is issued in Mongolian and English languages.
- c) In case of any dispute in the interpretation between the two language versions, the English version of this Protocol will prevail to the extent of any inconsistency.
- d) This Protocol will become effective upon approval by the Board.