

**Memorandum of Understanding
between
the Recipient Organizations
and
the United Nations Development Programme
regarding the Operational Aspects of
Trust Fund to Support Initiatives of States Countering Piracy
off the Coast of Somalia**

WHEREAS, the Contact Group on Piracy off the Coast of Somalia (hereafter referred to as “the Contact Group”) was established pursuant to Security Council resolution 1851 (2008) of 16 December 2008 as a voluntary, ad hoc international forum to coordinate international efforts in the fight against piracy off the coast of Somalia in recognition of the growing impact of piracy on humanitarian aid, commercial shipping, and regional trade in the Horn of Africa;

WHEREAS, in January 2010, at the request of the Contact Group, the United Nations Secretary-General established the “Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia (hereafter referred to as “the Trust Fund”).

WHEREAS, in the revised Terms of Reference (“TOR”) of for the Trust Fund dated 11 December 2012 to Support Initiatives of States Countering Piracy off the Coast of Somalia (herein under referred to as “Trust Fund”) attached hereto as ANNEX I, and incorporated herein by reference into this MOU, United Nations Development Programme (UNDP) through its Multi-Partner Trust Fund Office (MPTF Office) has been requested by the Trust Fund Board of to serve as the Trust Fund MPTF Administrative Agent, responsible for the administration of the Trust Fund.

WHEREAS, UNDP is willing and able to administer the Trust Fund in accordance with its Financial Regulations and Rules as well as this MOU and the TOR for the Trust Fund;

WHEREAS, the United Nations, represented by the United Nations Department of Political Affairs (DPA), and the UNDP, represented by its MPTF Office, have agreed on the terms and conditions under which the UNDP MPTF Office will serve as Administrative Agent of the Trust Fund and disburse funds to Recipient Organizations who choose to participate in programmatic activities funded through the Trust Fund, as set forth in the Memorandum of Understanding attached hereto as Annex II (hereinafter referred to as the “UN MOU”); and

WHEREAS, the Recipient Organizations have agreed to receive funds through the Trust Fund and carry out programmatic activities in accordance with the Terms of Reference and the UN MOU, and this Memorandum of Understanding.

NOW, THEREFORE, the UNDP and the Recipient Organizations (hereinafter referred to collectively as the “Participants”) hereby agree as follows:

Section I
Trust Fund Administration

1. The UNDP MPTF Office will serve as Administrative Agent on the terms set out in the Terms of Reference for the Trust Fund and the UN MOU. The Administrative Agent carries out its functions on the understanding that Recipient Organizations receiving funds from the Trust Fund assume full programmatic and financial accountability for the funds disbursed to them by the Administrative Agent.

2. On behalf of the United Nations, and in accordance with the UN MOU, the Administrative Agent will:
 - (a) Conclude a standardized Memorandum of Understanding with Recipient Organizations wishing to support the implementation of the activities for which they will receive funds from the Trust Fund, incorporating the UN MOU and the TOR;

 - (b) Receive contributions from Donors that wish to provide financial support to the Trust Fund; the Administrative Agent will enter into a Standard Administrative Arrangement (SAA). The Administrative Agent will not agree with the Donor to amend the terms of the SAA without prior written agreement of the Trust Fund Board. The Administrative Agent will ensure the online posting of a copy of the SAA it enters into, as well as information on Donor contributions;

 - (c) Administer such funds received in accordance with the UN MOU and this Memorandum of Understanding, including the provisions relating to winding up of the Trust Fund Account and related matters;

 - (d) Subject to availability of funds, disburse such funds to each of the Recipient Organizations in accordance with instructions from the Trust Fund Board, taking into account the budget set out in the approved programmatic document¹, as amended from time to time by the Trust Fund Board;

 - (e) Consolidate financial statements, based on submissions provided to the Administrative Agent by each Recipient Organization, as set forth in the TOR, and provide these to the Trust Fund Board and then to each Donor that has contributed to the Trust Fund Account, in accordance with the timeline set forth in the UN MOU and SAA;

 - (f) Provide final reporting, including notification that the Trust Fund has been fully expended or has been wound up, in accordance with Section IV of the UN MOU;

¹ As used in this document, an approved programmatic document refers to a programme/project document etc, which is approved for fund allocation purposes.

- (g) Request that each Recipient Organization establish a separate ledger account under its financial regulations and rules for the receipt and administration of the funds disbursed to it by the Administrative Agent from the Trust Fund Account;
- (h) Disburse funds to any Recipient Organization for any additional costs of the tasks that the Trust Fund Board may decide to allocate (as referred to in paragraph 3 below), in accordance with the TOR;
- (j) Perform such other activities as the Trust Fund Board and the Administrative Agent may agree in writing.

3. The Trust Fund Board may request any of the Recipient Organizations to perform additional tasks in support of the Trust Fund's operations at global and country levels that are not related to the Administrative Agent functions detailed in paragraph 2 (h) above and subject to the availability of funds. Costs for such tasks will be agreed in advance and, with the approval of the Trust Fund Board, be charged to the Trust Fund as direct costs.

4. None of the Recipient Organizations will be responsible for the acts or omissions of the Administrative Agent or its personnel, or of persons performing services on its behalf, except in regard to any contributory acts or omissions. With respect to such contributory acts or omissions of the Recipient Organizations, the resulting responsibility will be apportioned among them or any one of them to the extent of such contributory acts or omissions, or as may otherwise be agreed. In addition, Donors to the Trust Fund will not be directly responsible for the activities of any person employed by the Recipient Organizations or the Administrative Agent as a result of this Memorandum of Understanding.

5. A clear delineation, including distinct reporting lines and an accountability framework, will be established and maintained within UNDP between its functions as an Administrative Agent and its functions as a Recipient Organization.

Section II **Financial Matters**

The Administrative Agent

1. The Administrative Agent has established a separate ledger account under its financial regulations and rules for the receipt and administration of the funds received pursuant to the Standard Administrative Arrangements concluded with Donors (hereinafter referred to as the "Trust Fund Account"), in accordance with the UN MOU and the TOR. The Trust Fund Account will be administered by the Administrative Agent in accordance with the regulations, rules, directives and procedures applicable to it, including those relating to interest. The Trust Fund Account will be subject exclusively to the internal and external auditing procedures laid down in the financial regulations, rules, directives and procedures applicable to the Administrative Agent.

2. The Administrative Agent will not absorb gains or losses on currency exchanges which will increase or decrease the funds available for disbursement to Recipient Organizations.

3. The Administrative Agent will be entitled to allocate an administrative fee of one percent (1%) of the amount contributed by each Donor signing a Standard Administrative Arrangement, to meet the Administrative Agent's costs of performing the Administrative Agent's functions described in this Memorandum of Understanding.

4. Subject to the availability of funds, the Administrative Agent will make disbursements from the Trust Fund Account in accordance with the TOR for the Trust Fund, the UN MOU and this MOU, based on instructions from the Trust Fund Board, in line with the budget set forth in the programmatic document, as amended from time to time by the Trust Fund Board. The disbursements will consist of direct and indirect costs as set out in the approved programmatic document.

5. The Administrative Agent will normally make each disbursement within three (3) to five (5) business days after receipt of instructions from the Trust Fund Board, in line with the TOR, along with a copy of the relevant programmatic document, signed by all parties concerned. The Administrative Agent will transfer funds to each Recipient Organization through wire transfer in US dollars. Each Recipient Organization will advise the Administrative Agent in writing of the bank account for transfers pursuant to this Memorandum of Understanding. When making a transfer to a Recipient Organization, the Administrative Agent will notify that Recipient Organization's Treasury Operations of the following: (a) the amount transferred; (b) the value date of the transfer; and (c) that the transfer is from the UNDP MPTF Office in respect of the Trust Fund pursuant to this Memorandum of Understanding.

6. Where the balance in the Trust Fund Account on the date of a scheduled disbursement is insufficient to make a disbursement in full, the Administrative Agent will consult with the Trust Fund Board, and make a partial disbursement, if any, in accordance with the Trust Fund Board's instructions, provided that such partial disbursement will not exceed the funds available in the Trust Fund Account.

The Recipient Organizations

7. Each Recipient Organization will establish a separate ledger account under its financial regulations and rules for the receipt and administration of the funds disbursed to it by the Administrative Agent from the Trust Fund Account. That separate ledger account will be administered by each Recipient Organization in accordance with its own regulations, rules, directives and procedures, including those relating to interest. That separate ledger account will be subject exclusively to the internal and external auditing procedures laid down in the financial regulations, rules, directives and procedures applicable to the Recipient Organization concerned.

8. Each Recipient Organization will use the funds disbursed to it by the Administrative Agent from the Trust Fund Account to carry out the activities for which it is responsible as

set out in the approved programmatic document, as well as for its indirect costs. The Recipient Organizations will commence and continue to conduct operations for the programmatic activities only upon receipt of disbursements as instructed by the Trust Fund Board. The Recipient Organizations will not make any commitments above the approved budget in the approved programmatic document, as amended from time to time by the Trust Fund Board. If there is a need to exceed the budgeted amount, the Recipient Organization concerned will submit a supplementary budget request to the Trust Fund Board.

9. Indirect costs of the Recipient Organizations recovered through programme support costs will be 7%. In accordance with the UN General Assembly resolution 62/208 (2007 Triennial Comprehensive Policy Review principle of full cost recovery), all other costs incurred by each Recipient Organization in carrying out the activities for which it is responsible under the Trust Fund will be recovered as direct costs.

Section III **Activities of the Recipient Organizations**

1. The implementation of the programmatic activities will be the responsibility of the Recipient Organizations and will be carried out by each Recipient Organization in accordance with its applicable regulations, rules, directives and procedures. On the termination or expiration of this Memorandum of Understanding, the matter of ownership of supplies and equipment will be determined in accordance with the regulations, rules, directives and procedures applicable to such Recipient Organizations, including, where applicable, any agreement with the relevant host Government (if applicable).

2. Any modifications to the scope of the approved programmatic document, including as to their nature, content, sequencing or the duration thereof will be subject to mutual agreement in writing between the relevant Recipient Organization and the Trust Fund Board. The Recipient Organization will promptly notify the Administrative Agent of any change in the budget as set out in the programmatic document.

3. Where a Recipient Organization wishes to carry out its programmatic activities through or in collaboration with a third party, it will be responsible for discharging all commitments and obligations with such third parties, and no other Recipient Organization, nor the Administrative Agent or the Trust Fund Board, will be responsible for doing so.

4. In carrying out their programmatic activities, none of the Recipient Organizations will be considered as an agent of any of the others and, thus, the personnel of one will not be considered as staff members, personnel or agents of any of the others. Without restricting the generality of the preceding sentence, none of the Recipient Organizations will be liable for the acts or omissions of the other Recipient Organizations or their personnel, or of persons performing services on their behalf.

5. Each Recipient Organization will advise the Administrative Agent in writing when all activities for which it is responsible under the approved programmatic document have been completed.

6. The Recipient Organizations recognize that the Donors reserve the right to discontinue future contributions if reporting obligations are not met as set forth in the Standard Administrative Arrangement; or if there are substantial deviations from agreed plans and budgets. If it is agreed among the Trust Fund Board, the Donor(s), the Administrative Agent and the concerned Recipient Organization under the Standard Administrative Arrangement that there is evidence of improper use of funds, the Recipient Organization will use its best efforts, consistent with its regulations, rules, policies and procedures to recover any funds misused. The Recipient Organization will, in consultation with the Trust Fund Board and the Administrative Agent, credit any funds so recovered to the Trust Fund Account or agree with the Trust Fund Board to use these funds for a purpose mutually agreed upon. Before withholding future contributions or requesting recovery of funds and credit to the Trust Fund Account, the Trust Fund Board, the Administrative Agent, the concerned Recipient Organization and the Donor will consult with a view to promptly resolving the matter.

7. The Recipient Organizations recognize that it is important to take all necessary precautions to avoid corrupt, fraudulent, collusive or coercive practices. To this end, each Recipient Organization will maintain standards of conduct that govern the performance of their staff, including the prohibition of corrupt, fraudulent, collusive or coercive practices, in connection with the award and administration of contracts, grants, or other benefits, as set forth in their Staff Regulations and Rules and Financial Regulations and Rules, including regarding procurement. In the event that a Recipient Organization determines that an allegation in relation to the implementation of activities – including that corrupt, fraudulent, collusive or coercive practices may have taken place - is credible enough to warrant an investigation, it will promptly notify the Trust Fund Board and the Administrative Agent, to the extent that such notification does not jeopardize the conduct of the investigation. The allegation will be dealt with in accordance with the Recipient Organization's accountability and oversight framework and by the Recipient Organization's unit in charge of investigations. Upon completion of the investigation, the Recipient Organization will inform the Trust Fund Board and the Administrative Agent about the results of the investigation.

8. As an exceptional measure, particularly during the start up phase of the Trust Fund, subject to conformity with their financial regulations, rules and directives, Recipient Organizations may elect to start implementation of programmatic activities in advance of receipt of initial or subsequent transfers from the Trust Fund Account by using their own resources. Such advance activities will be undertaken in agreement with the Trust Fund Board on the basis of funds it has allocated or approved for implementation by the particular Recipient Organization following receipt by the Administrative Agent of an official commitment form or signature of the Standard Administrative Arrangements by Donors contributing to the Trust Fund. Recipient Organizations will be solely responsible for decisions to initiate such advance activities or other activities outside the parameters set forth above.

Section IV **Reporting**

1. Each Recipient Organization will provide the Administrative Agent with the following statements and reports prepared in accordance with the accounting and reporting procedures applicable to the Recipient Organization concerned, as set forth in the TOR and the UN MOU. The Recipient Organizations will endeavour to harmonize their reporting formats to the extent possible:

- (a) Annual financial statements and reports as of 31 December with respect to the funds disbursed to it from the Trust Fund Account, to be provided no later than four months (30 April) after the end of the calendar year;

- (b) Certified final financial statements and final financial reports after the completion of the activities in the approved programmatic document and including the final year of the activities in the approved programmatic document, to be provided no later than six months (30 June) of the year following the financial closing of the programmatic activities.

2. Each Recipient Organization will provide the Trust Fund Secretariat with the following statements and reports prepared in accordance with the reporting procedures applicable to the Recipient Organization concerned, as set forth in the TOR and the UN MOU. The Recipient Organizations will endeavour to harmonize their reporting formats to the extent possible:

- (a) Annual narrative progress reports, to be provided no later than three months (31 March) after the end of the calendar year;

- (b) Final narrative reports after the completion of the activities in the approved programmatic document and including the final year of the activities in the approved programmatic document, to be provided no later than four months (30 April) of the year following the financial closing of the programmatic activities. The final report will give a summary of results and achievements compared to the goals and objectives of the Trust Fund; and

3. The Administrative Agent will provide Consolidated Financial Reports, based on the reports referred to in paragraphs 1 (a) to (b) above, and the Trust Fund Secretariat will provide Consolidated Narrative Progress Reports, based on the reports referred to in paragraphs 2 (a) to (b) above, and will provide those reports to the Trust Fund Board, Donors and Recipient Organizations, in accordance with the timetable established in the UN MOU Section III paragraph 1 (a) and (b), and the Standard Administrative Arrangement Section V .

4. The Administrative Agent will also provide the Trust Fund Board, Donors and Recipient Organizations with the following statements on its activities as Administrative Agent:

- (a) Certified annual financial statement (“Source and Use of Funds” as defined by UNDG guidelines) to be provided no later than five months (31 May) after the end of the calendar year; and
 - (b) Certified final financial statement (“Source and Use of Funds”) to be provided no later than seven months (31 July) of the year following the financial closing of the Trust Fund.
5. Consolidated reports and related documents will be posted online on the website of the Administrative Agent (<http://mptf.undp.org>).

Section V **Monitoring and Evaluation**

1. Monitoring and evaluation of the programmatic activities will be undertaken by the respective Recipient Organizations in accordance with the provisions contained in the approved programmatic documents, which are to be consistent with the respective regulations, rules and procedures of the Recipient Organizations.
2. In addition, the Trust Fund Board may request an independent evaluation, assessment or review of Trust Fund operations.

Section VI **Audit**

1. The Administrative Agent and Recipient Organizations will be audited in accordance with their own Financial Regulations and Rules.

Section VII **Joint Communication**

1. Each Recipient Organization will take appropriate measures to publicize the Trust Fund and to give due credit to the other Recipient Organizations. Information given to the press, to the beneficiaries of the Trust Fund, all related publicity material, official notices, reports and publications, will acknowledge the role of the host Government, the United Nations, the Donor, the Recipient Organizations, the Administrative Agent and any other relevant entities. In particular, the Administrative Agent will include and ensure due recognition of the role of each Recipient Organization, the Trust Fund Board and the host Government in all external communications relating to the Trust Fund.
2. The Administrative Agent, in consultation with the Trust Fund Board and Recipient Organizations, will ensure that decisions regarding the review and approval of the Trust Fund, as well as periodic reports on the progress of implementation of the Trust Fund, including associated external evaluations, are posted online, where appropriate, on the website of the Administrative Agent (<http://mptf.undp.org>). Such reports and documents may include the Trust Fund Board approved programmes and programmes awaiting approval, fund level annual financial and progress reports and external evaluations, as appropriate.

Section VIII
Expiration, Modification and Termination of the Agreement

1. This MOU will expire upon winding up of the Trust Fund, subject to the continuance in force of paragraph 4 below for the purposes therein stated.
2. This MOU may be modified only by written agreement between the Participants, subject to written agreement of the Trust Fund Board.
3. Any of the Recipient Organizations may withdraw from this Memorandum of Understanding upon giving thirty (30) days' written notice to all other Participants to this MOU subject to the continuance in force of paragraph 4 below for the purposes therein stated.
4. Obligations assumed by the Participants under this MOU will survive the expiration or termination of this MOU or the withdrawal of a Recipient Organization to the extent necessary to permit the orderly conclusion of the activities and the completion of final reports, the withdrawal of personnel, funds and property, the settlement of accounts between the Participants hereto and the settlement of contractual liabilities that are required in respect of any subcontractors, consultants or suppliers. Any balance remaining in the individual Recipient Organizations' separate ledger accounts will be used for a purpose mutually agreed upon by the Donor(s) and the Trust Fund Board or returned to Donors in proportion to their contribution to the Trust Fund as agreed upon by the Trust Fund Board and Donors.

Section IX
Notices

1. Any action required or permitted to be taken under this Memorandum of Understanding may be taken on behalf of the Administrative Agent by the Executive Coordinator of the MPTF Office, or his designated representative and on behalf of a Recipient Organization by the official indicated in Annex III below, or his or her designated representative.
2. Any notice or request required or permitted to be given or made in this MOU will be in writing. Such notice or request will be deemed to be duly given or made when it will have been delivered by hand, mail or any other agreed means of communication to the party to which it is required to be given or made, at such party's address specified in Annex III to this MOU or at such other address as the party will have specified in writing to the party giving such notice or making such request.

Section X
Entry into Effect

1. This MOU will come into effect upon signature by authorized officials of the Participants and will continue in full force and effect until it is expired or terminated.

Section XI
Settlement of disputes

1. The Participants will use their best efforts to promptly settle through direct negotiations any dispute, controversy or claim arising out of or in connection with this MOU or any breach thereof. Any such dispute, controversy or claim which is not settled within sixty (60) days from the date either party has notified the other party of the nature of the dispute, controversy or claim and of the measures which should be taken to rectify it, will be resolved through consultation between the Executive Heads of each of the Recipient Organizations and of the Administrative Agent.

IN WITNESS WHEREOF, the undersigned, duly authorized representatives of the respective Participants, have signed this MOU in English.

For the Administrative Agent

Signature: SIGNED

Name: Bisrat Aklilu

Title: Executive Coordinator, UNDP MPTF Office

Place: New York

Date: 2012-12-21

For UNODC

Signature: SIGNED

Name: Sandeep Chawla

Title: Deputy Executive Director

Place: Vienna

Date: 2013-01-14

For UNDP

Signature: SIGNED

Name: David Clapp

Title: Country Director

Place: Nairobi, Kenya

Date: 2013-01-02

For IMO

Signature: SIGNED

Name: Yoshiaki Ito

Title: IMO Secretary-General's Special Advisor

Place: London

Date: 2013-02-21

For UNPOS

Signature: SIGNED

Name: Augustine P. Mahiga

Title: SRSG UNPOS

Place: Nairobi, Kenya

Date: 2013-02-25

For FAO

Signature: SIGNED

Name: R. van Aaken

Title: Deputy OIS

Place: Nairobi, Kenya

Date: 2013-05-21

ANNEX I: Terms of Reference of the Trust Fund to Support Initiatives of States
Countering Piracy off the Coast of Somalia

ANNEX II: Memorandum of Understanding between UN (DPA) and UNDP (MPTF
Office)

ANNEX III: Notices

ANNEX III:
NOTICES

For the Administrative Agent:

Name: Bisrat Aklilu
Title: Executive Coordinator, MPTF Office
Address: 730 Third Avenue, 20th Floor,
New York, NY 10017, USA
Telephone: +1 212 906 6880
Facsimile: +1 212 906 6990
Electronic mail: bisrat.aklilu@undp.org

For [Recipient Organization]

Name: _____
Title: _____
Address: _____
Telephone: _____
Facsimile: _____
Electronic mail: _____

For [Recipient Organization]

Name: _____
Title: _____
Address: _____
Telephone: _____
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For [Recipient Organization]

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