

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

This Memorandum of Understanding (MOU) is concluded between the United Nations, represented by the Department of Political Affairs (DPA) and the United Nations Development Programme (UNDP), represented by its Multi-Partner Trust Fund Office (MPTF Office). The United Nations and UNDP are hereinafter collectively referred to as the “Participants.”

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 the Trust Fund dated 11 December 2012 attached hereto as ANNEX A, and incorporated herein by reference into this MOU, UNDP through its MPTF Office has been requested by the Trust Fund Board of to serve as the Trust Fund 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, UNDP will also participate in the Trust Fund as a Recipient Organization, under a separate agreement, which role is separate and distinct from its Administrative Agent functions related to the Trust Fund; and

WHEREAS, relevant United Nations System Organizations, as well as other Organizations that have similar international character and financial rules and regulations will participate in the Trust Fund as Recipient Organizations;

NOW, THEREFORE, the Participants agree as follows:

Section I

The Roles of Trust Fund Board and the Administrative Agent

Responsibilities of the Trust Fund Board include:

1. Oversight and strategic direction of the Trust Fund and mobilization of its resources in accordance with the TOR;
2. Approval of project proposals, after technical review undertaken by the Trust Fund Secretariat and making funding decisions.
3. Receipt and review of the annual progress narrative and financial reports prepared by the Trust Fund Secretariat and the Administrative Agent.

Responsibilities of UNDP

1. UNDP, through its MPTF Office, will serve as Administrative Agent for the Trust Fund in accordance with its Financial Regulations and Rules, the TOR and the terms and conditions set out in this MOU. In case of any conflict between this MOU and the TOR, the MOU will prevail. The Administrative Agent agrees to assume this responsibility on the understanding that Recipient Organizations (United Nations, its funds and programmes and specialized agencies as well as other Organizations that have similar international character and financial rules and regulations) receiving funds from the Trust Fund assume full programmatic and financial accountability for the funds disbursed to them by the Administrative Agent.
2. 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.
3. On behalf of the United Nations, the MPTF Office, as Administrative Agent will:
 - (a) Conclude a standardized Memorandum of Understanding with Recipient Organizations wishing to support the implementation of activities for which they will receive funds from the Trust Fund, incorporating this 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, in the form attached hereto as ANNEX B (hereinafter referred to as a "Standard Administrative Arrangement or SAA") and incorporated herein by reference. The Administrative Agent will not agree with the Donor to amend the terms of Annex B without prior written agreement of the Trust Fund Board. The Administrative Agent will ensure the posting of a copy of the Administrative

Arrangement it enters into, as well as information on Donor contributions online on the Trust Fund webpage on the MPTF Office GATEWAY.

- (c) Administer such funds received, in accordance with this Memorandum of Understanding including the provisions relating to winding up the Trust Fund Account and related matters (Section VII below);
- (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 in writing 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 to each Donor that has contributed to the Trust Fund Account, in accordance with Section III below;
- (f) Provide final reporting, including notification that the Trust Fund has been fully expended or has been wound up, in accordance with Section IV below;
- (g) 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 Section I, Paragraph 2 above) in accordance with the TOR;
- (h) Perform such other activities as the Participants may agree in writing.

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 Administrative Arrangements (hereinafter, the “Trust Fund Account”). 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 disbursements to Recipient

¹ As used in this document, an approved programmatic document refers to an annual work plan or a programme/project document, etc., which is approved by the Trust Fund Board for fund allocation purposes.

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 an 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 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 Project.

5. The Administrative Agent will normally make each disbursement within three (3) to five (5) business days after receipt of instructions received from the Trust Fund Board in line with the TOR, along with a copy of the relevant approved programmatic document, signed by all the parties concerned. The Administrative Agent will transfer funds to each Recipient Organization through wire transfer in US dollars.

6. Where the balance in the Trust Fund Account on the date of a scheduled disbursement is insufficient to make that 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.

Section III **Reporting**

1. The Administrative Agent will provide the Trust Fund Board, Donors, and Recipient Organizations with the following reports, based on reports provided to the Administrative Agent by each Recipient Organization:

- (a) Consolidated Annual Financial Report on activities implemented under the Trust Fund as of 31 December, to be provided no later than 31 May after the end of the calendar year;
- (b) Consolidated Final Financial Report, after the completion of all project activities financed from the Trust Fund and including the final year of the project activities, to be provided no later than 31 July of the year following the financial closing of the Trust Fund. The final report will give a summary of results and achievements compared to the goals and objectives of the Trust Fund; and

2. The Trust Fund Secretariat will provide the Trust Fund Board, the Donor, and Recipient Organizations with the following reports, based on submissions provided to the Trust Fund Secretariat by each Recipient Organization:

- (a) Annual consolidated narrative progress reports, based on annual narrative progress reports received from Recipient Organizations, to be provided no later than five months (31 May) after the end of the calendar year;
- (b) Final consolidated narrative report, based on final narrative reports received from Recipient Organizations 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 seven months (31 July) of the year following the financial closing of the Trust Fund. The final consolidated narrative report will contain a summary of the results and achievements compared to the goals and objectives of the Trust Fund.

3. 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.

4. Consolidated reports and related documents will be posted online on the Trust Fund webpage on the MPTF Office GATEWAY.

Section IV **Monitoring and Evaluation**

1. Monitoring and evaluation of the Projects will be undertaken by the respective Recipient Organizations in accordance with the provisions contained in the approved Projects, 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 the Trust Fund operations.

Section V **Audit**

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

Section VI
Communication

1. The Administrative Agent in consultation with the Trust Fund Board 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 on the Trust Fund webpage on the MPTF Office GATEWAY, where appropriate. Such reports and documents may include Trust Fund Board approved programmes and programmes awaiting approval, fund level annual financial and progress reports and external evaluations, as appropriate.

Section VII
Expiration, Modification and Termination

1. This Memorandum of Understanding will expire upon winding up of the Trust Fund, subject to the continuance in force of paragraph 4 below for the purposes therein stated, unless terminated earlier by either party, upon thirty (30) days prior written notice to the other party.

2. This Memorandum of Understanding may be modified only by written agreement between the Participants.

3. The Administrative Agent's appointment shall terminate upon termination of the Trust Fund, subject to the continuance in force of paragraph 4 below for the purpose therein stated, unless such appointment is terminated earlier by the United Nations.

4. Obligations assumed by the Parties under this MOU will survive the expiration or termination of this MOU to the extent necessary to permit the orderly conclusion of the activities or transfer of such activities to the United Nations. Any balance remaining in the Trust Fund Account shall be transferred to the United Nations or used for a purpose mutually agreed upon by the United Nations and the Administrative Agent. Any balance remaining in the individual Recipient Organizations' separate ledger accounts shall be used for a purpose mutually agreed upon by 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 VIII
Notices

1. Any action required or permitted to be taken under this Memorandum of Understanding may be taken on behalf of the United Nations, by the Trust Fund Board Chair, or his or her designated representative, and on behalf of the Administrative Agent by the Executive Coordinator of the MPTF Office, or his designated representative.

2. Any notice or request required or permitted to be given or made in this Memorandum of Understanding will be in writing to the Trust Fund Board Chair and to the Executive Coordinator of the MPTF Office, UNDP. 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 C to this Memorandum of Understanding or at such party's address as the party will have specified in writing to the party giving such notice or making such request.

Section IX
Entry into Effect

1. This Memorandum of Understanding 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 X
Settlement of Disputes

1. The Parties will use their best efforts to amicably settle any dispute, controversy or claim arising out of this Memorandum of Understanding or the breach, termination or invalidity thereof. Should the Parties not be in a position to find a mutually acceptable solution, after full and careful consideration by the Administrator of UNDP and the Under-Secretary-General, DPA, the matter shall be deferred to the Secretary-General of the United Nations for resolution.

IN WITNESS WHEREOF, the undersigned, duly authorized representatives of the respective Participants, have signed this Memorandum of Understanding in English in two copies.

For UNDP

Signature: SIGNED
Name: Bisrat Aklilu
Title: Executive Coordinator, MPTF Office
Place: New York
Date: 2012-12-21

For the United Nations

Signature: SIGNED
Name: Jeffrey Feltman
Title: Under-Secretary-General, DPA
Place: New York
Date: 2012-12-20

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

ANNEX B: Standard Administrative Arrangement between the Donor and the
Administrative Agent

ANNEX C: Notices

ANNEX C

NOTICE

For the United Nations:

Name: Jeffrey Feltman

Title: Under-Secretary-General

Address: Room S-3520, Department of Political Affairs, United Nations, NY 10017

Telephone: +

Facsimile: +

Electronic mail:

For the UNDP Administrative Agent:

Name: Bisrat Aklilu

Title: Executive Coordinator, MPTF Office

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