

**STANDARD MEMORANDUM OF UNDERSTANDING (MOU) JOINT PROGRAMMES
USING PASS-THROUGH FUND MANAGEMENT¹**

¹TO BE DELETED BEFORE SIGNING: This Standard Memorandum of Understanding has been agreed upon by the members of the United Nations Development Group (UNDG). Any substantial ('substantial' would imply changes that are linked to the legal relationships described in the Memorandum of Understanding, the governance mechanisms, reporting arrangements or equivalent) modification to the Memorandum of Understanding requires the prior written agreement of the Participating UN Organizations and the Administrative Agent of the particular MDTF, and needs to be cleared by the Advisory Group through the UN Development Operations Coordination Office (DOCO).

**Memorandum of Understanding
between
Participating UN Organizations²
United Nations Development Programme
regarding the Operational Aspects of Joint Programme
“EL PROGRAMA MAYA -para el pleno ejercicio de los
derechos de los pueblos indígenas”
in Guatemala**

WHEREAS, the **Participating United Nations Organizations** signing this Memorandum of Understanding (hereinafter referred to collectively as the “Participating UN Organizations”) have developed a *Maya Programme: for the full implementation of the Indigenous peoples’ rights in Guatemala* (hereinafter referred to as the “Joint Programme”) starting on 20 January 2009 and ending on 31 December 2012, as may be amended from time to time, as part of their respective development cooperation with the Government of **Guatemala**, as more fully described in the Joint Programme Document dated [date of JP], document No [reference number of document] (hereinafter referred to as the “Joint Programme Document”), a copy of which is attached hereto as **ANNEX A**, and have agreed to establish a coordination mechanism (hereinafter referred to as the “Steering Committee”³) to facilitate the effective and efficient collaboration between the Participating UN Organizations and the host Government of Guatemala for the implementation of the Joint Programme;

WHEREAS, the Participating UN Organizations have agreed that they should adopt a coordinated approach to collaboration with donors who wish to support the implementation of the Joint Programme and have developed a Joint Programme Document to use as the basis for mobilising resources for the Joint Programme, and have further agreed that they should offer donors the opportunity to contribute to the Joint Programme and receive reports on the Joint Programme through a single channel;

WHEREAS, the Participating UN Organizations have further agreed to ask **United Nations Development Programme** (which is also a Participating UN Organization in connection with this Joint Programme) to serve as the administrative interface between the donor and the Participating UN Organizations and for these purposes **UNDP** has agreed to do so in accordance with this Memorandum of Understanding.

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

Section I
Appointment of Administrative Agent; its Status, Duties and Fee

1. The Participating UN Organizations hereby appoint **UNDP** (hereinafter referred to as the “Administrative Agent”) to serve as their Administrative Agent in connection with the Joint Programme, in accordance with the terms and conditions set out in this Memorandum of Understanding. The Administrative Agent accepts this appointment on the understanding that the Participating UN Organizations assume full programmatic and

² As indicated in the signature blocks.

³ The composition of the Joint Programme Steering Committee is defined in Annex C of the Joint Programme Document.

financial accountability for the funds disbursed to them by the Administrative Agent. This appointment will continue until it expires, or is terminated, in accordance with Section VIII below.

2. On behalf of the Participating UN Organizations, the Administrative Agent will:
 - (a) Receive contributions from donors that wish to provide financial support to the Joint Programme;
 - (b) Administer such funds received, in accordance with this Memorandum of Understanding including the provisions relating to winding up the Joint Programme Account and related matters;
 - (c) Subject to availability of funds, disburse such funds to each of the Participating UN Organizations in accordance with instructions from the Steering Committee, taking into account the budget set out in the Joint Programme Document, as amended in writing from time to time by the Steering Committee;
 - (d) Consolidate statements and reports, based on submissions provided to the Administrative Agent by each Participating UN Organization, as set forth in the Joint Programme Document, and provide these to each donor that has contributed to the Joint Programme Account and to the Steering Committee;
 - (e) Provide final reporting, including notification that the Joint Programme has been operationally completed, in accordance with Section IV below;
 - (f) Disburse funds to any Participating UN Organization for any additional costs of the task that the Steering Committee may decide to allocate (as referred to in Section I, Paragraph 3) in accordance with Joint Programme Document.

3. The Steering Committee may request any of the Participating UN Organizations, to perform additional tasks in support of the Joint Programme not related to the Administrative Agent functions detailed in Section I, Paragraph 2 above and subject to the availability of funds. Costs for such tasks will be agreed in advance and with the approval of the Steering Committee be charged to the Joint Programme as direct costs.

4. The Administrative Agent will enter into a Standard Administrative Arrangement, in the form attached hereto as ANNEX B (hereinafter referred to as an "Administrative Arrangement"), with each donor that wishes to provide financial support to the Joint Programme through the Administrative Agent. The Administrative Agent will not agree with the Donor to amend the terms of Annex B without prior written agreement of the Participating UN Organizations. The Administrative Agent will ensure the posting of a copy of the Administrative Arrangement it enters into, as well as information on donor contributions, on the website of the Administrative Agent (<http://www.undp.org/mdtf/overview.shtml>) as well as the website of the UN in Guatemala (www.onu.org.gt) as appropriate.

5. None of the Participating UN 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 its respective contributory acts or omissions. With respect to contributory acts or omissions of the Participating UN 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 will not be directly responsible for the activities of any person employed by the Participating UN Organizations or the Administrative Agent as a result of this Memorandum of Understanding.

6. 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.

7. Where the Administrative Agent is also a Participating UN Organization, a clear delineation, including distinct reporting lines and an accountability framework, will be established and maintained within the organization designated as the Administrative Agent between its functions as an Administrative Agent and its functions as a Participating UN Organization.

Section II **Financial Matters**

The Administrative Agent

1. The Administrative Agent will establish a separate ledger account under its financial regulations and rules for the receipt and administration of the funds received pursuant to Administrative Arrangement (hereinafter, the "Joint Programme Account"). The Joint Programme 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 Joint Programme 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 Participating UN Organizations.

3. Subject to the availability of funds, the Administrative Agent will make disbursements from the Joint Programme Account based on instructions from the Steering Committee, in line with the budget set forth in the Joint Programme Document, as amended from time to time by the Steering Committee. The disbursements will consist of direct and indirect costs as set out in the budget.

4. The Administrative Agent will normally make each disbursement within three (3) to five (5) business days after receipt of the relevant Joint Programme Document, in accordance with the instructions received from the Steering Committee in line with the Joint Programme Document, along with a copy of the relevant Joint Programme Document, signed by all the parties concerned. The Administrative Agent will transfer funds to each Participating UN Organization through wire transfer. Each Participating UN 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

Participating UN Organization, the Administrative Agent will notify that Participating UN 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** in respect of the Joint Programme in **Guatemala** pursuant to this Memorandum of Understanding.

5. Where the balance in the Joint Programme Account on the date of a scheduled disbursement is insufficient to make that disbursement, the Administrative Agent will consult with the Steering Committee and make a disbursement, if any, in accordance with the Steering Committee's instructions.

The Participating UN Organizations

6. Each Participating UN 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 Joint Programme Account. That separate ledger account will be administered by each Participating UN 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 Participating UN Organization concerned.

7. Each Participating UN Organization will use the funds disbursed to it by the Administrative Agent from the Joint Programme Account to carry out the activities for which it is responsible as set out in the Joint Programme Document, as well as for its indirect costs. The Participating UN Organizations will commence and continue to conduct operations for the Joint Programme activities only upon receipt of disbursements as instructed by the Steering Committee. The Participating UN Organizations will not make any commitments above the approved budget in the Joint Programme Document, as amended from time to time by the Steering Committee. If there is a need to exceed the budgeted amount, the Participating UN Organization concerned will submit a supplementary budget request to the Steering Committee.

8. Indirect costs of the Participating UN 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 Participating UN Organization in carrying out the activities for which it is responsible under the Joint Programme will be recovered as direct costs.

Section III Activities of the Participating UN Organizations

1. The implementation of the Joint Programme activities will be the responsibility of the Participating UN Organizations and will be carried out by each Participating UN 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 Participating UN Organizations, including, where applicable, any agreement with the relevant host Government.

2. Any modifications to scope of the signed Joint Programme Document, including as to their nature, content, sequencing or the duration thereof will be subject to mutual

agreement in writing between the relevant Participating UN Organization and the Steering Committee. The Participating UN Organization will promptly notify the Administrative Agent through the Steering Committee, of any change in the budget as set out in the Joint Programme Document.

3. Where a Participating UN Organization wishes to carry out its Joint Programme 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 Participating UN Organization, nor the Administrative Agent, will be responsible for doing so.

4. In carrying out their Joint Programme activities, none of the Participating UN 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 Participating UN Organizations will be liable for the acts or omissions of the other Participating UN Organizations or their personnel, or of persons performing services on their behalf.

5. Each Participating UN Organization will advise the Administrative Agent in writing when all activities for which it is responsible under the Joint Programme Document have been completed.

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

7. The Participating UN Organizations recognize that it is important to take all necessary precautions to avoid corrupt, fraudulent, collusive or coercive practices. To this end, each Participating UN 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 Participating UN 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 Steering Committee 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 Participating UN Organization's accountability and oversight framework and by the Participating UN Organization's unit in charge of investigations. Upon completion of the investigation, the Participating UN Organization

will inform the Steering Committee and the Administrative Agent about the results of the investigation.

8. As an exceptional measure, particularly during the start up phase of the Joint Programme, subject to conformity with their financial regulations, rules and directives, Participating UN Organizations may elect to start implementation of Joint Programme activities in advance of receipt of initial or subsequent transfers from the Joint Programme Account by using their own resources. Such advance activities will be undertaken in agreement with the Steering Committee on the basis of funds it has allocated or approved for implementation by the particular Participating UN Organization following receipt by the Administrative Agent of an official commitment form or signature of the Administrative Arrangements by donors contributing to the Joint Programme. Participating UN 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 Participating UN Organization will provide the Administrative Agent with the following statements and reports prepared in accordance with the accounting and reporting procedures applicable to the Participating UN Organization concerned, as set forth in the Joint Programme Document. The Participating UN 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) Annual financial statements and reports as of 31 December with respect to the funds disbursed to it from the Joint Programme Account, to be provided no later than four months (30 April) after the end of the calendar year;
- (c) Final narrative reports, after the completion of the activities in the Joint Programme Document and including the final year of the activities in the Joint Programme Document, to be provided no later than four months (30 April) of the year following the financial closing of the Programme. The final report will give a summary of results and achievements compared to the goals and objectives of the Joint Programme; and
- (d) Certified final financial statements and final financial reports after the completion of the activities in the Joint Programme Document and including the final year of the activities in the Joint Programme Document, to be provided no later than six months (30 June) of the year following the financial closing of the Programme.

2. The Administrative Agent will prepare consolidated narrative progress and financial reports, based on the reports referred to in paragraph 1 (a) to (d) above, and will provide those consolidated reports to each donor that has contributed to the Joint Programme Account, as well as the Steering Committee, in accordance with the timetable established in the Administrative Arrangement.

3. The Administrative Agent will also provide the donors, Steering Committee and Participating UN 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 Joint Programme.

4. Consolidated reports and related documents will be posted on the websites of the UN in Guatemala (www.unu.org.gt) and the Administrative Agent (<http://www.undp.org/mdtf/overview.shtml>).

Section V **Monitoring and Evaluation**

1. Monitoring and evaluation of the Joint Programme will be undertaken in accordance with the provisions contained in the Joint Programme Document, which are consistent with the respective regulations, rules and procedures of the Participating UN Organizations.

2. The donor(s), the Administrative Agent and the Participating UN Organizations will hold annual consultations, as appropriate, to review the status of the Joint Programme.

Section VI **Audit**

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

Section VII **Joint Communication**

1. Each Participating UN Organization will take appropriate measures to publicize the Joint Programme and to give due credit to the other Participating UN Organizations. Information given to the press, to the beneficiaries of the Joint Programme, all related publicity material, official notices, reports and publications, will acknowledge the role of the host Government, the donors, the Participating UN 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 Participating UN Organization and national partner in all external communications relating to the Joint Programme.

2. The Administrative Agent in consultation with the Participating UN Organizations will ensure that decisions regarding the review and approval of the Joint Programme as well as periodic reports on the progress of implementation of the Joint Programme, associated external evaluation are posted, where appropriate, for public information on the websites of UN in Guatemala (www.unu.org.gt) and the Administrative Agent (<http://www.undp.org/mdtf/overview.shtml>). Such reports and documents may include

Steering Committee approved programmes and programmes awaiting approval, fund level annual financial and progress reports and external evaluations, as appropriate.

Section VIII Expiration, Modification and Termination

1. This Memorandum of Understanding will expire upon completion of the Joint Programme, subject to the continuance in force of paragraph 5 below for the purposes therein stated.
2. This Memorandum of Understanding may be modified only by written agreement between the Participants.
3. Any of the Participating UN Organizations may withdraw from this Memorandum of Understanding upon giving thirty (30) days' written notice to all other Participants to this Memorandum of Understanding subject to the continuance in force of paragraph 5 below for the purpose therein stated.
4. The Administrative Agent's appointment may be terminated by the Administrative Agent (on the one hand) or by the mutual agreement of all Participating UN Organizations (on the other hand) on thirty (30) days' written notice to the other party, subject to the continuance in force of paragraph 5 below for the purpose therein stated. In the event of such termination, the Participants will agree on measures to bring all activities to an orderly and prompt conclusion so as to minimize costs and expense.
5. Commitments assumed by the withdrawing or terminating Participants under this Memorandum of Understanding will survive the expiration or termination of this Memorandum of Understanding or the termination of the Administrative Agent or withdrawal of a Participating UN 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 Joint Programme Account or in the individual Participating UN Organizations' separate ledger accounts upon completion of the Joint Programme will be used for a purpose mutually agreed upon or returned to the donor(s) in proportion to their contribution to the Joint Programme as agreed upon by the donors and the Steering Committee.

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 MDTF Office or his or her designated representative, and on behalf of a Participating UN Organization by the head of office in **Guatemala**, or his or her designated representative.
2. Any notice or request required or permitted to be given or made in this Memorandum of Understanding 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 D to this Memorandum of Understanding 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

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 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 Memorandum of Understanding 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 Participating UN Organizations and of the Administrative Agent.

IN WITNESS WHEREOF, the undersigned, duly authorized representatives of the respective Participants, have signed this Memorandum of Understanding in the English in **3** copies.

