

The World Bank

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

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**TRANSFER AGREEMENT
HAITI RECONSTRUCTION FUND (HRF) TRUST FUND
(MTO No. 069016)**

WHEREAS the International Development Association ("IDA"), as trustee (the "Trustee") of the trust fund for the Haiti Reconstruction Fund ("HRF") (MTO No. 069016) (the "Trust Fund") and United Nations Development Programme ("UNDP"), through its Multi-donor Trust Fund Office ("MDTF"), in its capacity as the Administrative Agent ("AA") of the Participating UN Organizations in the United Nations Development Group Haiti Reconstruction Fund ("UNDG HRF") (the "Partner Entity" or "UNDP MDTF Office", and together with the Trustee, the "Parties") are entering into this Transfer Agreement (the "Transfer Agreement") for the commitment and transfer of funds from the Trust Fund;

WHEREAS the Trust Fund has been established through Administration Agreements;

WHEREAS the Participating UN Organizations have appointed UNDP to serve, through its MDTF Office, as the administrative interface between the Trustee and the Participating UN Organizations for the receipt of funds from the HRF and their administration, disbursement of these funds to the Participating UN Organizations, and channel for reporting on activities of the HRF implemented by the Participating UN Organizations through the UNDG HRF, in accordance with the UNDG HRF Memorandum of Understanding signed between UNDP MDTF Office and the Participating UN Organizations, attached hereto as Annex A ("UNDG HRF MOU");

WHEREAS the Partner Entity may provide requests to the Trustee for the transfer of Transferred Funds from the Trust Fund to finance Projects and/or Programs and Administrative Fees, which the Trustee shall transfer under this Transfer Agreement in accordance with the terms set forth herein; and

WHEREAS the UNDP MDTF Office, in accordance with its policies and procedures, will make the Transferred Funds available to the Participating UN Organizations in accordance with the UNDG HRF MOU and in accordance with the terms hereof to carry out the Projects and/or Programs approved by the Steering Committee.

NOW THEREFORE, the Parties hereto agree as follows:

1. This Transfer Agreement is being entered into between the Trustee and the UNDP MDTF Office based on the Allocations to finance Projects and/or Programs and Administrative Fees approved by the Steering Committee.
2. Capitalized terms used herein, but not otherwise defined in this Transfer Agreement, shall have the meanings ascribed to them below:
 - (a) "Administration Agreement" means any administration agreement entered into between the Trustee and any Donor in respect of the Donor's Contribution.
 - (b) "Administrative Costs" means the administrative and other costs incurred by the Trustee and/or the Secretariat, in connection with the performance of their administrative services and other activities in support of the Trust Fund.

- (c) "Activity" or "Activities" means one or more activities carried out to achieve the objective of the Trust Fund, including: (a) technical assistance and capacity building; (b) infrastructure investments; (c) delivery of basic services; (d) community development; (e) environmental protection and clean-up; (f) income generation activities; and (g) budget support.
- (d) "Administrative Fees" means the administrative and indirect costs of the UNDP MDTF Office and the Participating UN Organizations, respectively, including but not limited to, costs for Project preparation, Project supervision, preparation of reports and unaudited or audited financial reports, incurred in connection with the management of the Projects, as set forth in the UNDG HRF MOU and as previously approved by the Steering Committee.
- (e) "Allocation" means the portion of the Trust Fund funds, including the Contributions, that has been allocated to Projects, Administrative Costs and Administrative Fees that have been approved by the Steering Committee.
- (f) "Closing Date" means the date after which no disbursements can be made by the Participating UN Organizations for the Projects, as may be amended from time to time as agreed by the Steering Committee.
- (g) "Contribution" means each Donor's respective contribution to the Trust Fund, and "Contributions" means the aggregate of all the contributions to the Trust Fund.
- (h) "Donor" means any country (including any ministry and agency thereof) or, if agreed by the Steering Committee and the Trustee, such other entity, that provides a Contribution.
- (i) "Fiscal Year" means January 1 through December 31 of each calendar year.
- (j) "Investment Income" means the investment income earned on the Transferred Funds except for the income earned on the investment of the Administrative Fees.
- (k) "Program" means more than one Project.
- (l) "Project" means an Activity or Activities which are to be financed with funds from the Trust Fund, as approved by the Steering Committee based upon a Proposal.
- (m) "Proposal" means any proposal submitted by the Partner Entity to the Steering Committee seeking an Allocation of funds from the Trust Fund.
- (n) "Secretariat" means the administrative unit established at the World Bank with offices in Haiti to support the work of the Trust Fund and to support the Steering Committee.
- (o) "Steering Committee" means the committee of the Trust Fund established to approve Projects and/or Programs for each Partner Entity consistent with the objective of the Trust Fund as set forth in the Administration Agreements.
- (p) "Transferred Funds" means any portion of the Allocation that the Trustee transfers in United States dollars to the Partner Entity pursuant to this Transfer Agreement.

(q) "World Bank" means IDA and the International Bank for Reconstruction and Development.

3. The UNDP MDTF Office, acting as the Administrative Agent ("AA") on behalf of the Participating United Nations Organizations of the UNDG HRF ("Participating UN Organizations"), signs this Transfer Agreement as Partner Entity on the understanding that the Participating UN Organizations assume full programmatic and financial accountability for the approved Projects and/or Programs and the Administrative Fees that will be disbursed to them by the UNDP MDTF Office, as set forth in the UNDG HRF MOU, including the UNDP as a Participating UN Organization, for the UNDG HRF. The UNDG HRF MOU details the respective roles and responsibilities of the UNDP MDTF Office as AA, and the Participating UN Organizations. The UNDP MDTF Office, in its capacity as AA, shall not implement Projects and/or Programs under the HRF. Unless the context otherwise requires and without limiting the responsibilities of the UNDP MDTF Office as AA, all references in this Transfer Agreement related to the fiduciary, financial, and programmatic responsibilities with respect to Transferred Funds, Project or Program implementation, financial and other regulations, rules, policies or procedures, and recourse by Donors, and all references to Projects and/or Programs, shall be deemed to refer to the responsibilities of each Participating UN Organization and its Projects and/or Programs, as set out in the UNDG HRF MOU and the terms of reference of the UNDG HRF; provided that the foregoing shall not be deemed to limit any responsibilities specifically placed on the Participating UN Organizations hereunder. The UNDP MDTF Office shall not transfer any Transferred Funds to a Participating UN Organization unless that Participating UN Organization has agreed to comply with the terms of this Transfer Agreement.

4. Once the Steering Committee has approved the Program(s) or Project(s) and made specific Allocations, and the Secretariat has notified the Trustee and the UNDP MDTF Office of the approval, the Trustee will commit the Allocations for such Project(s) and Administrative Fees, subject to the availability of funding and notify the UNDP MDTF Office of the commitment. The UNDP MDTF Office shall then request the Trustee to transfer Trust Fund funds to the UNDP MDTF Office pursuant to this Transfer Agreement, in the form of Schedule 1 attached hereto (a "Funds Transfer Request"). Upon receipt of the Funds Transfer Request, the Trustee shall, on behalf of the Steering Committee, transfer such funds to the UNDP MDTF Office to the account specified in such Funds Transfer Request, provided that: (i) any amount to be transferred by the Trustee to the UNDP MDTF Office is consistent with and does not exceed the specific Allocations; and (ii) the amount of available funds in the Trust Fund equals or exceeds the amount requested in the Funds Transfer Request as specified in the approved final Project/Program document.

5. Upon the transfer of the Transferred Funds, the Trustee shall have no responsibility, fiduciary or otherwise, to the UNDP MDTF Office, for the use of such funds, including the implementation or supervision of Projects financed by such funds.

6. The UNDP MDTF Office confirms that the transfer of any Transferred Funds by the UNDP MDTF Office to and the utilization of such Transferred Funds by the Participating UN Organizations, shall be in accordance with: (i) the UNDG HRF MOU and each Participating UN Organizations' own policies and procedures, including those in respect of its tax exempt status and related to procurement of goods and services, employment and supervision of consultants, investment of funds and combating fraud and corruption; (ii) the applicable decisions of the Steering Committee, including the purpose for which the specific Allocations have been approved by the Steering Committee as specified in the approved Program or Project.

7. The UNDP MDTF Office agrees that the Transferred Funds shall be kept separate and apart from the funds of the UNDP MDTF Office in one or more dedicated accounts pending their transfer to the Participating UN Organizations' use for the purposes for which the specific Allocation has been approved

by the Steering Committee. Upon transfer to the Participating UN Organizations, the Transferred Funds shall be kept separate and apart from the funds of that Participating UN Organization. The Transferred Funds in these dedicated accounts may be commingled and may be freely exchanged by the UNDP MDTF Office or by the Participating UN Organizations, as the case may be, into other currencies as may facilitate their further disbursement and investment. Where the UNDP MDTF Office transfers the Transferred Funds to a Participating UN Organization in a currency other than the currency in which the Transferred Funds have been transferred by the Trustee is made, any exchange rate risk arising as a result of such conversion of currencies shall be borne by the respective Participating UN Organization. The respective Participating UN Organization shall require the Government of Haiti to maintain a dedicated account for any funds received for budget support.

8. Subject to the terms of this Transfer Agreement, the UNDP MDTF Office may invest all Transferred Funds pending their transfer to the Participating UN Organizations in accordance with the UNDP MDTF Office's policies and procedures concerning the investment of funds, and each Participating UN Organization may invest all the Transferred Funds pending their disbursement in accordance with its respective policies and procedures concerning the investment of funds. The UNDP MDTF Office and each Participating UN Organization shall not be held liable for any losses, which may arise from such investment save to the extent provided for in paragraph 18 below. Except for investment income earned on the Administrative Fees, any Investment Income earned on the Transferred Funds by the Participating UN Organization or the UNDP MDTF Office will be returned from the UNDP MDTF Office to the Trustee annually or as the Trustee and the UNDP MDTF Office may agree.

9. The UNDP MDTF Office may retain Administrative Fees for each Program and/or Project from the Transferred Funds in the amount equivalent to 1% of the Transferred Funds, as previously approved by the Steering Committee.

10. The UNDP MDTF Office in accordance with its policies and procedures shall: (i) maintain books, records, documents, and other evidence in accordance with its usual accounting procedures to sufficiently substantiate the transfer of the Transferred Funds to the Participating UN Organizations; (ii) provide periodic financial reports including annual unaudited or audited financial reports, in accordance with the UNDG HRF MOU and as agreed with the Steering Committee; and (iii) provide any other relevant financial information, in United States dollars to the Trustee for distribution to the Steering Committee, as agreed with the Steering Committee. Each Participating UN Organization shall maintain books, records, documents, and other evidence in accordance with its usual accounting procedures to sufficiently substantiate the use of the Transferred Funds by the respective Participating UN Organization

11. The UNDP MDTF Office shall prepare and submit to the Secretariat for each Program or Project: (i) no later than one hundred fifty (150) days after the end of each Fiscal Year annual reports on implementation results based on the common format for reporting on implementation results approved by the Steering Committee; (ii) mid-year progress narrative reports if agreed with the Steering Committee; and (iii) no later than six (6) months after (a) the Closing Date of each Project; or (b) notification by the Trustee that the Steering Committee has cancelled all or part of a Program(s) and/or Project for reasons set out in paragraph 14 below (as the case may be), a final report. The foregoing reports shall be prepared in accordance with the UNDG HRF MOU.

12. After notification by the Trustee that the Steering Committee has cancelled all or part of a Program(s) and/or Project(s) for reasons set out in paragraph 14 below, the UNDP MDTF Office shall return to the Trustee any unexpended and uncommitted portion of the Transferred Funds for the cancelled Program(s) and/or Project remaining with it and/or the relevant Participating UN Organization(s), and any unused portion of the Administrative Fees in consultation with the Steering Committee.

13. The Steering Committee may direct the Trustee, after consultation with the UNDP MDTF Office and the relevant Participating UN Organization(s), to suspend any further commitment and/or withhold disbursements of the Trust Fund funds for a specific Program or Project under this Transfer Agreement for any of the following reasons: (i) a substantial deviation from the Program's or Project's workplan and budget approved by the Steering Committee; (ii) failure of the UNDP MDTF Office to comply with any of the terms of this Transfer Agreement applicable to it and to remedy or cause to be remedied any such non-compliance; or (iii) evidence of financial mismanagement in Programs and/or Projects, as determined in accordance with the UNDG HRF MOU.

14. In the case where the Trustee has notified the UNDP MDTF Office in writing that (i), (ii) or (iii) as indicated in paragraph 13 above has occurred, and the UNDP MDTF Office or the relevant Participating UN Organization, as the case may be, fails to remedy or cause to be remedied such event within thirty (30) calendar days after written notification by the Trustee, the Trustee: (i) will consult with the Steering Committee; and (ii) at the direction of the Steering Committee in consultation with the UNDP MDTF Office, may suspend any further commitment and/or disbursement of the Transferred Funds for a specific Program(s) and/or Project to the UNDP MDTF Office until such time as the UNDP MDTF Office or the relevant Participating UN Organization, as the case may be, has remedied or has caused to be remedied the relevant event to the satisfaction of the Steering Committee as notified to the Trustee; provided, however, that in the case where the Trustee has notified the UNDP MDTF Office of non-compliance with respect to paragraph 16 below, the relevant Participating UN Organization shall immediately suspend any further commitment and/or disbursement to the persons or entities or for the activities identified in the notice as being prohibited under paragraph 16 until such time as such relevant Participating UN Organization has remedied or has caused to be remedied the non-compliance to the satisfaction of the Steering Committee.

15. The Steering Committee may also direct the Trustee to claim repayment of the Transferred Funds in full or in part directly from the UNDP MDTF Office or the UN Participating Organizations to the extent the UNDP MDTF Office has been able to obtain repayment of the same from the relevant Participating UN Organization(s), or to the extent the UN Participating Organization(s) has been able to obtain repayment from the negligent party, if the said funds are found to be misused or not satisfactorily accounted for. Such repayment shall be in accordance with the Participating UN Organization's(s') applicable regulations, rules, policies and procedures.

16. Each Participating UN Organization:

- (i) undertakes to use reasonable efforts, consistent with its policies and procedures, including those pertaining to combating financing for terrorists, to ensure that the Trust Fund funds transferred to it by the UNDP MDTF Office are used for their intended purposes and are not diverted to terrorists or their agents;
- (ii) will not use Trust Fund funds for the purpose of any payment to persons or entities, or for the import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, including under United Nations Security Council Resolution 1373 and related resolutions;
- (iii) confirms that, given the activities to be funded with the Trust Fund funds transferred to it by the UNDP MDTF Office, the Participating UN Organization does not believe that any such funds would be diverted to drug traffickers and their conspirators;

- (iv) shall immediately inform the UNDP MDTF Office, which shall inform the Steering Committee, of a determination pursuant to the UNDG HRF MOU, of any illegal or corrupt practice in any Project financed under this Transfer Agreement; and
- (v) will include provisions corresponding to subparagraphs (i) – (iii) above in any programming agreement that the Participating UN Organization enters into with entities to which the Participating UN Organization makes Trust Fund funds available.

17. The UNDP MDTF Office shall be responsible only for performing its functions specifically set forth in this Transfer Agreement and the UNDG HRF MOU and shall not be subject to any other duties or responsibilities, including, without limitation, any duties or obligations that might otherwise apply to a fiduciary or a trustee under general principles of trust or fiduciary law.

18. In performing its functions in accordance with the terms of this Transfer Agreement, the UNDP MDTF Office shall not be liable for any loss, costs or damages that may result from any act or omission on the part of the UNDP MDTF Office other than those caused by its gross negligence or willful misconduct.

19. Nothing in this Transfer Agreement shall be considered a waiver of any privileges or immunities of IDA, the UNDP MDTF Office or any of the Participating UN Organizations under their respective constituent documents or any applicable law, all of which are expressly reserved. Nothing in this Transfer Agreement shall be considered as an acceptance by the Partner Entity of the jurisdiction of any national courts or the application of any domestic law.

20. This Transfer Agreement may be terminated by either Party upon three (3) months prior written notice and upon consultation with the Steering Committee. Following termination, the Trustee and the UNDP MDTF Office shall, in consultation with the Steering Committee to the extent possible, take all necessary action for winding up their affairs in relation to the Program or Project(s) in an expeditious manner, and for meeting the commitments already made by the Trustee and the UNDP MDTF Office under this Transfer Agreement prior to the date of the abovementioned termination notice. In the event of any such termination, unless the Parties agree on another course of action: (i) any agreement entered into prior to the termination between the UNDP MDTF Office, the Participating UN Organizations, any consultants, and/or other third parties will remain in effect and be unaffected by the termination; and (ii) the UNDP MDTF Office shall continue to disburse the Transferred Funds in respect of such agreements to the extent necessary to fulfill the UNDP MDTF Office's obligations thereunder as if this Transfer Agreement had not been terminated. All other Transferred Funds remaining with the UNDP MDTF Office or the Participating UN Organizations including any Investment Income earned on the Transferred Funds and any unused or uncommitted amount of the Administrative Fees shall be returned to the Trustee.

21. Each Donor, as a third party beneficiary, shall have the right to seek direct enforcement or recourse against the UNDP MDTF Office or a Participating UN Organization, as the case may be, with respect to any unmet or breached obligations of the UNDP MDTF Office or Participating UN Organizations, as the case may be, stated in this Transfer Agreement provided that the procedures specified in paragraph 14 have been exhausted. If as a result of a Donor's recourse the UNDP MDTF Office or Participating UN Organization, as the case may be, makes any payment, such payment will be made through the UNDP MDTF Office to the Trustee and only for the benefit of the Trust Fund. The Donor may not seek recourse against the UNDP MDTF Office or Participating UN Organization for unmet or breached obligations valued in an amount that exceeds the percentage of Contribution(s) made by the Donor, or Donors if acting severally, to the Trust Fund and transferred to the UNDP MDTF Office as Transferred Funds, as determined by the Trustee. The UNDP MDTF Office, the Participating UN Organization and the Donor(s) shall use their best efforts to amicably resolve any disputes, controversy or claims arising out of or relating to this Transfer Agreement.

22. In the event that the role of the UNDP MDTF Office as AA of the UNDG HRF is terminated in accordance with the UNDG HRF MOU, the Trustee agrees that the rights and obligations under this Transfer Agreement may be assigned to and assumed by such other UN Organization as may be designated by the Participating UN Organizations as the new AA, and that all responsibilities and obligations of the UNDP MDTF Office under this Transfer Agreement shall cease as of the date of termination of the UNDP MDTF Office's appointment as AA.

23. The UNDP MDTF Office, in consultation with the Participating UN Organizations, may invite the Donors to participate in supervision missions related to the Trust Fund and, if any Donor wishes to request to review or evaluate Activities financed by the Trust Fund, the Donor and the Partner Entity, in consultation with the respective Participating UN Organizations, shall agree on the scope and conduct of such review or evaluation, and the Partner Entity and the Participating UN Organizations shall provide all relevant information within the limits of their policies and procedures. It is understood that any such review or evaluation will not constitute a financial compliance or other audit of the Trust Fund or any Activities financed by the Trust Fund. All associated costs will be borne by the Donor, unless otherwise agreed.

24. The persons listed below (the "Trustee Contact" and the "UNDP MDTF Office Contact", respectively, and each a "Contact"), or any other authorized person identified by written notice from one Party to the other Party, may take any action required or permitted to be taken, and execute any documents required or permitted to be executed, pursuant to this Transfer Agreement on behalf of its respective organization. Any notice or request to be given or made under this Transfer Agreement by a Contact shall be in writing and sent to the address (including an email address) set forth below or such other address, as either Contact may provide by written notice.

Trustee Contact:

Ms. Susan McAdams
Director
Multilateral Trusteeship and Innovative Financing Department
The World Bank
1818 H Street, NW
Washington, DC 20433
U.S.A.

Tel: (202) 458-0019
Fax: (202) 614-0795
E-mail: Smcadams@worldbank.org

UNDP MDTF Office Contact:

Mr. Bisrat Aklilu
Executive Coordinator
UNDP Multi-Donor Trust Fund Office
730 Third Avenue
New York, NY 10017
U.S.A.

Tel: (212) 906-6880
Fax: (212) 906-6990
E-mail: bisrat.aklilu@undp.org

25. The Trustee and/or the UNDP MDTF Office, will make this Transfer Agreement and any related information on the Trust Fund publicly available in accordance with their policies and procedures with respect to the disclosure of information, in effect at the time of such disclosure.

26. This Transfer Agreement may be amended only by written agreement between the Parties.

27. The Parties agree that upon receipt by the Trustee of the copy of this Transfer Agreement countersigned by the UNDP MDTF Office, this Transfer Agreement will become effective as of the date of the UNDP MDTF Office's countersignature.

**INTERNATIONAL DEVELOPMENT ASSOCIATION
AS TRUSTEE OF THE HAITI RECONSTRUCTION FUND**

Susan McAdams
Director
Multilateral Trusteeship and Innovative Financing Department

Date: 11/29/2010

**UNDP MULTI-DONOR TRUST FUND OFFICE (MDTF OFFICE)
AS PARTNER ENTITY OF THE HAITI RECONSTRUCTION FUND**

Bisrat Aklilu
Executive Coordinator
Multi-Donor Trust Fund Office

Date: 30 November 2010

Form of Partner Entity Funds Transfer Request

[Partner Entity letterhead]

[Date]

[name]

[title]

Trustee Contact pursuant to the
Transfer Agreement

RE: Haiti Reconstruction Fund (MTO No. 069016)

Dear [name]:

Reference is made to the Transfer Agreement between the International Development Association (“IDA”) as trustee (the “Trustee”) of the trust fund for the Haiti Reconstruction Fund (“HRF”) and the _____ (the “Partner Entity” or “UNDP MDTF Office”), effective as of _____ (the “Transfer Agreement”), in which the Trustee has agreed to transfer funds to the UNDP MDTF Office for the HRF consistent with the terms of the Administration Agreements for the Haiti Reconstruction Fund (MTO No. 069016) (the “Trust Fund”).

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Transfer Agreement.

Pursuant to paragraph 4 of the Transfer Agreement, the UNDP MDTF Office hereby requests you to transmit _____ [insert currency and amount] from the Trust Fund for the UNDP MDTF Office’s transfer to Participating UN Organizations consistent with the terms of the Transfer Agreement, for (i) the following Project(s) and/or Programs scheduled to be disbursed within the period from _____ to _____; and (ii) the Administrative Fees for each of the following Project(s) and/or Programs, as approved by the Steering Committee in accordance with the following table:

Approved Project(s)	Approved Amount for the Project(s) ([insert currency])	Approved Amount for the Administrative Fees for the Project(s) ([insert currency])	Closing Date
[]	[]	[]	
[]	[]	[]	
[]	[]	[]	
[]	[]	[]	
[]	[]	[]	

No Transferred Funds shall be disbursed by the UNDP MDTF Office after the relevant Closing Date for the Project and/or Programs.

Please make the payment by wire transfer to:

UNDP Multi Donor Trust Fund Office (USD) Account
JP Morgan Chase Bank
International Agencies Banking
270 Park Avenue, 43rd Floor
New York, New York 10017
Account 790440309
SWIFT Code: CHASUS33
ABA: 021000021
Reference: MDTF/UNDG HRF

Sincerely,

UNDP MDTF OFFICE

Bisrat Aklilu
Executive Coordinator
UNDP Multi-Donor Trust Fund Office
as Partner Entity Contact pursuant to the
Transfer Agreement