

**MEMORANDUM OF UNDERSTANDING (MOU) FOR
THE DEMOCRATIC REPUBLIC OF CONGO POOLED FUND**

**Memorandum of Understanding
between
Participating UN Organizations¹
and
the United Nations Development Programme
regarding the Operational Aspects of a
DRC Pooled Fund (DRC PF)**

WHEREAS, the **Participating United Nations Organizations** signing this Memorandum of Understanding (hereinafter referred to collectively as the “Participating UN Organizations”) have developed a Democratic Republic of the Congo Pooled Fund (DRC PF) **starting in January 2006** and ending upon completion of all projects funded through the DRC PF (hereinafter referred to as the “Fund”), to support a coordinated approach to the delivery of humanitarian aid in DRC within the framework of a the Humanitarian Action Plan which outlines the strategic and operational plan for the UN and partners assistance in DRC, developed in consultation with Congolese national, provincial and local authorities, as more fully described in the Terms of Reference of the Fund (hereinafter referred to as the “TOR”), a copy of which is attached hereto as ANNEX A;

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 Fund and have developed a TOR to use as the basis for mobilising resources for the Fund, and have further agreed that they should offer donors the opportunity to contribute to the Fund and receive reports on the Fund through a single channel; and

WHEREAS, the Participating UN Organisations have agreed that the projects and the operations of the Fund will be designed and carried out in accordance with the Fund TOR and under the authority of the Humanitarian Coordinator for DRC;

WHEREAS, the United Nations Office for the Coordination of Humanitarian Affairs (hereinafter “OCHA”), which is also a Participating UN Organization in connection with the DRC Pooled Fund, has agreed, as manager of the Humanitarian Coordinator system, that such responsibilities be entrusted in the Humanitarian Coordinator, advised by the Pooled Fund Board as described in the TOR;

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

¹ As indicated in the signature blocks.

WHEREAS, NGO partners and other designated institutions or entities will have access to the Fund through UNDP performing an additional oversight function;

NOW, THEREFORE, the Participating UN Organizations, the United Nations Office for the Coordination of Humanitarian Affairs and the United Nations Development Programme (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 the United Nations Development Programme (hereinafter referred to as the “Administrative Agent”) to serve as their Administrative Agent in connection with the Fund, 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 financial accountability for the funds disbursed to them by the Administrative Agent, and the Humanitarian Coordinator assumes overall responsibility for the operations of the Fund. 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 Fund;
 - (b) Administer such funds received, in accordance with this Memorandum of Understanding including the provisions relating to winding up the Fund Account and related matters;
 - (c) Subject to availability of funds, disburse such funds to each of the Participating UN Organizations in accordance with the Fund TOR and the decisions of the Humanitarian Coordinator;
 - (d) Maintain a Reserve in accordance with the TOR and the decisions of the Humanitarian Coordinator;
 - (e) Provide reporting, in accordance with Section IV below; and
 - (f) Disburse funds to any Participating UN Organization for any additional costs of the task that the Humanitarian Coordinator may decide to allocate (as referred to in Section I, Paragraph 3) in accordance with the TOR.

3. The Humanitarian Coordinator may request any of the Participating UN Organizations, to perform additional tasks in support of the Fund 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 Humanitarian Coordinator be charged to the Fund 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 Fund 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 Humanitarian Coordinator and 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://mdtf.undp.org/factsheet/fund/HCG10>).

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 “Fund Account”). The 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 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 Participating UN Organizations.
3. Subject to the availability of funds, the Administrative Agent will make disbursements from the Fund Account based on instructions from the Humanitarian Coordinator, in line with the budget set forth in the programmatic document². The disbursements will consist of direct and indirect costs as set out in the budget.
4. Subject to the availability of funds, and taking the Reserve into account, the Administrative Agent will normally make each disbursement within three (3) to five (5) business days after receipt of the relevant approved programmatic document, in accordance with the instructions received from the Humanitarian Coordinator in line with the TOR, along with a copy of the relevant approved programmatic document, all signed by the Humanitarian Coordinator. 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 United Nations Development Programme in respect of the Fund pursuant to this Memorandum of Understanding.
5. Where the balance in the Fund Account on the date of a scheduled disbursement is insufficient to make that disbursement, the Administrative Agent will consult with the Humanitarian Coordinator and make a disbursement, if any, in accordance with the Humanitarian Coordinator'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 Fund 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 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 Participating UN Organizations will commence and continue to conduct operations for the programmatic activities only upon receipt of disbursements as

² 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 Humanitarian coordinator for fund allocation purposes.

instructed by the Humanitarian Coordinator. The Participating UN Organizations will not make any commitments above the approved budget in the approved programmatic document. If there is a need to exceed the budgeted amount, the Participating UN Organization concerned will submit a supplementary budget request to the Humanitarian Coordinator.

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 Fund will be recovered as direct costs.

Section III **Activities of the Participating UN Organizations**

1. The implementation of the programmatic 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, its basic agreement with the Government of DRC.

2. Any modifications to 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 Participating UN Organization and the Humanitarian Coordinator. The Humanitarian Coordinator will promptly notify the Administrative Agent of any change in the allocations approved.

3. Where a Participating UN 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 Participating UN Organization, nor the Administrative Agent, will be responsible for doing so.

4. In carrying out their programmatic 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 approved programmatic document have been completed.

6. NGO partners and other designated institutions or entities will have access to the Fund through UNDP performing an oversight function, based on a project agreement concluded with such entities as implementing partners in accordance with UNDP's regulations, rules and procedures. The Humanitarian Coordinator will retain the responsibility for the allocation of funds to a specific NGO and projects in line with the allocation process and in keeping with UNDP's regulations and rules.

7. 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 Humanitarian Coordinator and the Administrative Agent, credit any funds so recovered to the Fund Account or agree with the Humanitarian Coordinator to use these funds for a purpose mutually agreed upon. Before withholding future contributions or requesting recovery of funds and credit to the Fund Account, the Administrative Agent, the concerned Participating UN Organization and the donor will consult with a view to promptly resolving the matter.

8. 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 Humanitarian Coordinator 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 Humanitarian Coordinator and the Administrative Agent about the results of the investigation.

9. As an exceptional measure, particularly during the start up phase of the Fund, subject to conformity with their financial regulations, rules and directives, Participating UN Organizations may elect to start implementation of programmatic activities in advance of receipt of initial or subsequent transfers from the Fund Account by using their own resources. Such advance activities will be undertaken in agreement with the Humanitarian Coordinator 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 Fund. 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 Humanitarian Coordinator and 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 TOR. The Participating UN Organizations will endeavour to harmonize their reporting formats to the extent possible:

- (a) Annual narrative report (referred to as *Regular Project Result Sheet*) for each project funded through the Fund in accordance with the reporting system endorsed by the HC in consultation with the Pooled Fund Board no later than two months (28 February) after the end of the calendar year. These will include uncertified financial report on the use of funds;
- (b) Final narrative reports for each project funded through the Fund in accordance with the reporting system endorsed by the HC in consultation with the Pooled Fund Board
- (c) Annual financial statements and reports as of 31 December with respect to the funds disbursed from the Fund Account, to be provided no later than four months (30 April) after the end of the calendar year;
- (d) 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 Fund.

2. The Administrative Agent will submit to the Humanitarian Coordinator, the Pooled Fund Board and donors that have contributed to the Fund the following financial reports and statements:

- (a) Statements of donor commitments, deposits and transfers to Participating UN Organizations and other financial information (referred to as “DRC Pooled Fund”), available directly from the publicly accessible MDTF Office GATEWAY (<http://mdtf.undp.org/factsheet/fund/HCG10>);
- (b) Annual consolidated financial reports, based on annual financial statements and reports received from Participating UN Organizations, no later than five months (31 May) after the end of the calendar year;
- (c) Final consolidated financial reports, based on certified final financial statements and final financial reports received from Participating UN Organizations, no later than seven months (31 July) of the year following the financial closing of the Fund;
- (d) Certified annual financial statement (“Source and Use of Funds” as defined by UNDG guidelines) on its activities as Administrative Agent, to

be provided no later than five months (31 May) after the end of the calendar year; and

- (e) Certified final financial statement (“Source and Use of Funds”), on its activities as Administrative Agent to be provided no later than seven months (31 July) of the year following the financial closing of the Fund.

3. The Humanitarian Coordinator, supported by the Joint Pooled Fund Unit and in close consultation with the Cluster Leads, will provide the Pooled Fund Board, donors that have contributed to the Fund, and the Participating Organizations with the Annual Consolidated Report on the DRC Pooled Fund activities no later than **31 May** of the following year. The annual report, based on submissions provided by each Participating UN Organizations to the Administrative Agent and the Humanitarian Coordinator respectively, will include::

- (a) A general overview of the functioning of the Pooled Fund;
- (b) The results obtained by the Pooled Fund through a quantitative and qualitative overview of projects achievements throughout the year;
- (c) An uncertified financial report on the use of funds compiled by the Pooled Fund Secretariat based on the information provided to Humanitarian Coordinator by Participating UN Organizations.
- (d) Annual consolidated financial report on the use of the resources of the Pooled Fund based on the submission provided by the Administrative Agent.

4. Consolidated reports and related documents will be posted on the official DRC PF website (<http://www.rdc-humanitaire.net/>) and the Administrative Agent website (<http://mdtf.undp.org/factsheet/fund/HCG10>).

Section V **Monitoring and Evaluation**

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

2. The Humanitarian Coordinator, in consultation with the Pooled Fund Board, may commission an independent “lessons learnt and review” of the entire operation of the Fund and individual projects as necessary.

Section VI **Audit**

1. The Administrative Agent and Participating UN Organizations will be audited in accordance with their own Financial Regulations and Rules and, in case of MDTFs, in accordance with the Framework for auditing multi-donor trust funds which has been agreed to by the Internal Audit Services of Participating UN Organizations and endorsed by the UNDG in September 2007.

2. The activities of the Humanitarian Coordinator will be audited in accordance with the Financial Regulations and Rules of the UN.

Section VII **Joint Communication**

1. Each Participating UN Organization will take appropriate measures to publicize the Fund and to give due credit to the other Participating UN Organizations. Information given to the press, to the beneficiaries of the Fund, all related publicity material, official notices, reports and publications, will acknowledge the role of 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 Fund.
2. The Humanitarian Coordinator will ensure that decisions regarding the review and approval of projects/programmes funded by the Fund, as well as periodic reports on the progress of implementation of such projects/programmes and associated external evaluation reports are posted, for public information on the official website of the DRC PF (<http://www.rdc-humanitaire.net/>) and the Administrative Agent website (<http://mdtf.undp.org/factsheet/fund/HCG10>). Website postings will include record of decisions of the Advisory Group, summary sheets of approved allocations, annual financial and narrative progress reports, as well as other relevant information on the operations of the Fund.

Section VIII **Expiration, Modification and Termination**

1. This Memorandum of Understanding will expire upon winding up of the Fund, 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 Fund Account or in the individual Participating UN Organizations' separate ledger accounts upon winding up of the Fund will be used for a purpose mutually agreed upon or returned to the donor(s) in proportion to their contribution to the Fund as agreed upon by the donors and the Humanitarian Coordinator, in consultation with Participating Organizations.

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, or his or her designated representative, on behalf of OCHA, by the Executive Head of OCHA, or his or her designated representative, and on behalf of a Participating UN Organization by the head of office in DRC, 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 C 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, OCHA 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 [number of signatories³] copies.

For the Administrative Agent

Signature: SIGNED
Name: Bisrat Aklilu
Title: Executive Coordinator, MPTF Office

Place: New York
Date: 8 August 2011

*For the United Nations Office for the
Coordination of Humanitarian Affairs
(OCHA)*

Signature: SIGNED
Name: Moses Tefula
Title: Chief of Finance and OIC
Administrative Office

Place: Geneva
Date: 28 July 2011

For Participating UN Organization WHO

Signature: SIGNED
Name: Bazira Leodigal
Title: Representative
Place: Kinshasa
Date: 7 July 2011

For Participating UN Organization FAO

Signature: SIGNED
Name: Ndiaga Gueye
Title: Representative
Place: Kinshasa
Date: 16 June 2011

*For Participating UN Organization
UNICEF*

Signature: SIGNED
Name: Pierrete Vu-Thi
Title: Representative
Place: Kinshasa
Date: 22 June 2011

For Participating UN Organization UNHCR

Signature: SIGNED
Name: Mohammed Boucry
Title: Regional Representative
Place: Kinshasa
Date: 6 July 2011

For Participating UN Organization UNOPS

Signature: SIGNED
Name: Pierre Jullien
Title: Director and Representative
Place: Kinshasa
Date: 23 June 2011

For Participating UN Organization UNFPA

Signature: SIGNED
Name: Richard Dackham
Title: Representative
Place: Kinshasa
Date: 21 June 2011

For Participating UN Organization UNDP

Signature: SIGNED
Name: Nick Hartman
Title: Country Director a.i.
Place: Kinshasa
Date: 23 June 2011

For Participating UN Organization WFP

Signature: SIGNED
Name: Abdou Dieng
Title: Representative
Place: Kinshasa
Date: 22 June 2011

³ Additional signatories can be included through addendum

*For Participating UN Organization
UNWOMEN*

Signature: _____
Name: _____
Title: _____
Place: _____
Date: _____

*For Participating UN Organization
UNMACC*

Signature: SIGNED
Name: Paul Heslop
Title: Chief
Place: Nairobi
Date: 4 July 2011

*For Participating UN Organization
UNAIDS*

Signature: SIGNED
Name: Kékoura Kourouma
Title: Country Coordinator
Place: Kinshasa
Date: 23 June 2011

*For Participating UN Organization
UNESCO*

Signature: SIGNED
Name: Anne Laure Folly Reimann
Title: Representative
Place: Kinshasa
Date: 15 June 2011

ANNEX A: Terms of Reference of the DRC Pooled Fund (DRC PF)

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

ANNEX C: Notices
