

MEMORANDUM OF UNDERSTANDING (MOU)

for the

**TRUST FUND TO SUPPORT INITIATIVES OF STATES
COUNTERING PIRACY OFF THE COAST OF SOMALIA**

**Memorandum of Understanding
between
Participating UN Organizations¹
and
the United Nations Office on Drugs and Crime
regarding the Operational Aspects of a
Trust Fund to Support Initiatives of States Countering Piracy
off the Coast of Somalia**

WHEREAS, the Participating United Nations Organizations that have signed to this Memorandum of Understanding (hereinafter referred to collectively as the “Participating UN Organizations”) have developed a *Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia* (hereinafter referred to as the “Fund”) starting on 10 February 2010, as may be amended from time to time, as part of their efforts to counter the challenges of piracy off the coast of Somalia, as more fully described in the Terms of Reference for the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia, dated 27 January 2010 (hereinafter referred to as the “TOR”), a copy of which is attached hereto as **ANNEX A**, and have agreed to establish a coordination and advisory mechanism (hereinafter referred to as the “Fund Board”) to facilitate the effective and efficient collaboration between the Participating UN Organizations and the Member States Contact Group on Piracy off the Coast of Somalia for the implementation of the Fund;

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 Organizations have further agreed to ask the United Nations Office on Drugs and Crime (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 Office on Drugs and Crime has agreed to do so in accordance with this Memorandum of Understanding.

NOW, THEREFORE, the Participating UN Organizations and the United Nations Office on Drugs and Crime (hereinafter referred to collectively as the “Participants”) hereby agree as follows:

¹ As indicated in the signature blocks.

Section I
Appointment of Fund Manager; its Status, Duties and Fee

1. The Participating UN Organizations hereby appoint the United Nations Office on Drugs and Crime (hereinafter referred to as the “Fund Manager”) to serve as their Fund Manager in connection with the Fund, in accordance with the terms and conditions set out in this Memorandum of Understanding. The Fund Manager 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 Fund Manager. 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 Fund Manager 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 closure 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 instructions from the Fund Board, taking into account the budget set out in the approved programmatic template, as amended in writing from time to time by the Fund Board;
 - (d) Consolidate statements and reports, based on submissions provided to the Fund Manager by each Participating UN Organization, as set forth in the TOR, and provide these to each donor that has contributed to the Fund Account and to the Fund Board;
 - (e) Provide final reporting, including notification that the Fund has been fully expended or has been closed in accordance with the Fund TOR, in accordance with Section IV below;
 - (f) Disburse funds to any Participating UN Organization for any additional costs of the task that the Fund Board may decide to allocate (as referred to in Section I, Paragraph 3) in accordance with TOR.

3. The Fund Board may request any of the Participating UN Organizations, to perform additional tasks in support of the Fund not related to the Fund Manager 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 Fund Board be charged to the Fund as direct costs.

4. The Fund Manager 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 Fund Manager. The Fund Manager will not agree with the Donor to amend the terms of Annex B without prior written agreement of the Participating UN Organizations. The Fund Manager 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 Fund Manager (www.UNODC.org).

5. None of the Participating UN Organizations will be responsible for the acts or omissions of the Fund Manager 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 Fund Manager as a result of this Memorandum of Understanding.

6. The Fund Manager will be entitled to allocate an administrative fee of three per cent (3 %) of the amount contributed by each donor signing an Administrative Arrangement, to meet the Fund Manager’s costs of performing the Fund Manager’s functions described in this Memorandum of Understanding.

7. As the Fund Manager 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 Fund Manager between its functions as an Fund Manager and its functions as a Participating UN Organization.

Section II **Financial Matters**

The Fund Manager

1. The Fund Manager 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 Fund Manager 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 Fund Manager.

2. The Fund Manager will not absorb gains or losses on currency exchanges which will increase or decrease the funds available for disbursements to Participating UN Organizations. Such amounts will increase or decrease the funds available for disbursements to Participating UN Organizations.

3. Subject to the availability of funds, the Fund Manager will make disbursements from the Fund Account based on recommendation from the Fund Board, in line with the budget set forth in the programmatic document, as amended from time to time by the Fund Board. The disbursements will consist of direct and indirect costs as set out in the budget.

4. The Fund Manager will normally make each disbursement within three (3) to five (5) business days after receipt of the relevant approved programmatic document and all supporting materials, in accordance with the recommendations received from the Fund Board in line with the TOR, along with a copy of the relevant approved programmatic document, signed by all the parties concerned. The Fund Manager will transfer funds to each Participating UN Organization through wire transfer. Each Participating UN Organization will advise the Fund Manager in writing of the bank account for transfers pursuant to this Memorandum of Understanding. When making a transfer to a Participating UN Organization, the Fund Manager 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 Office on Drugs and Crime 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 Fund Manager will consult with the Fund Board and make a disbursement, if any, in accordance with the Fund Board's recommendation.

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 Fund Manager 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 Fund Manager 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 recommended by the Fund Board. The Participating UN Organizations will not make any commitments above the approved budget in the approved programmatic document, as amended from time to time by the Fund Board. If there is a need to exceed the budgeted amount, the Participating UN Organization concerned will submit a supplementary budget request to the Fund Board.

8. Indirect costs of the Participating UN Organizations recovered through programme support costs will be a maximum of seven per cent (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, any agreement with the relevant host Government (if applicable).
2. Any modifications to scope of the approved programmatic template, 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 Fund Board. The Participating UN Organization will promptly notify the Fund Manager and the Fund Board, of any change in the budget as set out in the programmatic document.
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 Fund Manager, 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 Fund Manager in writing when all activities for which it is responsible under the approved programmatic 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 Fund Manager 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 Fund Board and the Fund Manager, credit any funds so recovered to the Fund Account or agree with

the Fund Board to use these funds for a purpose mutually agreed upon. Before withholding future contributions or requesting recovery of funds and credit to the Fund Account, the Fund Manager, 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 Fund Board and the Fund Manager, 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 Fund Board and the Fund Manager about the results of the investigation.

8. 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 Fund Board on the basis of funds it has allocated or approved for implementation by the particular Participating UN Organization following receipt by the Fund Manager 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 Fund Manager 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 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 Fund Account, to be provided no later than two months (28 February) after the end of the calendar year;
 - (c) Final narrative reports, after the completion of the activities in the approved programmatic document and including the final year of the activities in the approved programmatic document, to be provided no later than four months (30 April) of the year following the financial closing of the Fund. The final report will give a summary of results and achievements compared to the goals and objectives of the Fund; and
 - (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 two (28 February) of the year following the financial closing of the Fund.
2. The Fund Manager 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 Fund Account, as well as the Fund Board, in accordance with the timetable established in the Administrative Arrangement.
3. The Fund Manager will also provide the donors, Fund Board and Participating UN Organizations with the following statements on its activities as Fund Manager:
- (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 Fund.
4. Consolidated reports and related documents will be posted on the websites of the Fund Manager (www.UNODC.org).

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 donor(s), the Fund Manager and the Participating UN Organizations will hold annual consultations, as appropriate, to review the status of the Fund.

Section VI
Audit

1. The Fund will be subject to the internal and external audit procedures of the United Nations. Participating UN Organizations implementing projects funded from the Fund will comply with their own financial regulations and rules, including their own internal and external audit procedures.

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 Contact Group, the donors, the Participating UN Organizations, the Fund Manager and any other relevant entities. In particular, the Fund Manager 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 Fund Manager in consultation with the Participating UN Organizations will ensure that decisions regarding the review and approval of the Fund as well as periodic reports on the progress of implementation of the Fund, associated external evaluation are posted the Fund Manager (www.UNODC.org). Such reports and documents may include Fund Board approved programmes and programmes awaiting approval, fund level annual financial and progress reports and external evaluations, as appropriate.

Section VIII
Expiration, Modification and Termination

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 Fund Manager's appointment may be terminated by the Fund Manager (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 Fund Manager 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 Fund Board.

Section IX **Notices**

1. Any action required or permitted to be taken under this Memorandum of Understanding may be taken on behalf of the Fund Manager, or his or her designated representative, and on behalf of a Participating UN Organization 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 or mail 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 and of the Fund Manager. Any dispute which cannot be settled amicably, may be submitted by either party to final and binding arbitration in accordance with UNCITRAL Arbitration Rules, as in effect on the date this Agreement is signed.

IN WITNESS WHEREOF, the undersigned, duly authorized representatives of the respective Participants, have signed this Memorandum of Understanding in the English in [number of signatories²] copies.

For the Fund Manager

For Participating UN Organization [name]

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

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

For Participating UN Organization [name] For Participating UN Organization [name]

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

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

For Participating UN Organization [name] For Participating UN Organization [name]

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

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

For Participating UN Organization [name] For Participating UN Organization [name]

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

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

ANNEX A: Terms of Reference

ANNEX B: Standard Administrative Arrangement between the Donor and the Fund Manager

ANNEX C: Notices

² Additional signatories can be included through addendum

ANNEX C

NOTICES

For the Fund Manager:

Facsimile: _____

Electronic mail: _____

*For Participating UN Organization
[name]*

*For Participating UN Organization
[name]*

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Facsimile: _____

Facsimile: _____

Electronic mail: _____

Electronic mail: _____

*For Participating UN Organization
[name]*

*For Participating UN Organization
[name]*

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Facsimile: _____

Facsimile: _____

Electronic mail: _____

Electronic mail: _____

*For Participating UN Organization
[name]*

*For Participating UN Organization
[name]*

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Facsimile: _____

Facsimile: _____

Electronic mail: _____

Electronic mail: _____

*For Participating UN Organization
[name]*

*For Participating UN Organization
[name]*

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Facsimile: _____

Facsimile: _____

Electronic mail: _____

Electronic mail: _____

*For Participating UN Organization
[name]*

Name: _____

Title: _____

Address: _____

Telephone: _____