

MEMORANDUM OF UNDERSTANDING

among

**the Federative Republic of Brazil
Represented by the Ministry of External Relations**

and

**the French Republic
Represented by the Ministry of Foreign Affairs**

and

**the Republic of Chile
Represented by the Ministry of External Relations**

and

**the Kingdom of Norway
Represented by the Ministry of Foreign Affairs**

and

**the United Kingdom of Great Britain and Northern Ireland
Represented by the Department for International Development**

and

the World Health Organization

**Concerning the Hosting of
the International Drug Purchase Facility – UNITAID**

Preamble

The Governments of Brazil, France, Chile, Norway and the United Kingdom (the “Initial Donors”) and the World Health Organization (“WHO”) (also collectively referred to as the “Parties”) have agreed to collaborate in the formation and implementation of the International Drug Purchase Facility-UNITAID (“UNITAID”). UNITAID is an innovative funding mechanism being initiated by the Initial Donors to accelerate access to high-quality drugs and diagnostics for HIV/AIDS, malaria and tuberculosis in high-burdened countries. WHO shares these same public health goals, and it has agreed to assist UNITAID in achieving these goals by serving as the host organization for UNITAID and providing its Secretariat, Trust Fund, administrative and fiduciary support, and facilities as well as by providing strategic and technical advice to the UNITAID Board and providing technical support and advice to countries and partners benefiting from UNITAID support.

The Parties contemplate that this hosting arrangement would provide an accountability framework that would enable operations to be conducted with all necessary safeguards and due diligence, thus permitting the Donors to commence UNITAID activities rapidly while benefiting from the existing administrative support and fiduciary systems of WHO.

The Parties recognize the desirability of clearly setting out in a Memorandum of Understanding (this "MoU") their mutual expectations and their respective roles, responsibilities and undertakings assumed in support of UNITAID and, to that end, have agreed as follows:

ARTICLE 1

UNITAID

1.1 UNITAID Governance. The Parties acknowledge that the undertakings of WHO are based on its understanding of UNITAID's intended objectives, key activities, organizational framework, and functions of its various core components, as expressed in the UNITAID "Constitution" and "Bylaws", especially in relation to the consistency between UNITAID's contemplated activities and the mission and mandate of WHO. The Parties acknowledge that UNITAID's "Constitution", "Bylaws" and initial governance structure may change over time as UNITAID evolves, and they agree that the Board will consult in advance with WHO regarding any such proposed changes. In case of inconsistency between the terms of this MoU and the UNITAID "Constitution" and "Bylaws", the terms of this MoU shall govern the respective roles, responsibilities and undertakings of the Parties within the remit of the MoU.

1.2 WHO Board Representation. WHO shall be a member of the Executive Board of UNITAID (the "Board") and shall participate in all decision-making by the Board. It is the understanding of the Parties that the members of the Board will use best efforts to make all decisions by consensus. If all practical efforts by the Board and its Chair have not led to consensus, any member of the Board may call for a vote. In the event that a vote by the members of the Board is required with respect to any matter, WHO shall not participate in such vote. In the event that the WHO Director General shall, after consultation with the Board (either as a whole or through its Chair), consider that the implementation of the decision of the Board would be inconsistent with WHO Rules or could give rise to the possibility of inappropriate liability for WHO, WHO (and any staff member of WHO) shall refrain from implementation of such decision. The Parties recognize that there may be circumstances where it would be appropriate for WHO to recuse itself from decisions being taken by the Board.

1.3 Management of Conflicts of Interest. The members of the Board will be attentive to conflict of interest issues and will manage them pursuant to appropriate conflict of interest policies.

1.4 Donor Contributions . The Donors will mobilize adequate funds for the effective operation of UNITAID, the Secretariat and related activities.

Donors may also agree to make contribution of staff to UNITAID in accordance with Article 4 below.

1.5 Donor Financial Commitments. The obligation of WHO to implement any particular aspect of the UNITAID project is conditional upon WHO having received all necessary and sufficient funds (as determined in accordance with the WHO Rules) with respect to the contemplated expenditure.

1.6 Additional Donors. Additional countries may participate in UNITAID and become donors under conditions determined by the Board and shall accede to this MoU as additional donors. (Such additional donors, together with the Initial Donors, are referred to herein collectively as the “Donors”).

ARTICLE 2

HOSTING ARRANGEMENT

2.1 Hosting Arrangement. UNITAID is a collaborative drug purchase facility, which aims to achieve its mission by the coordinated efforts of the Donors, working together with national governments, international organizations, non-governmental organizations and foundations (collectively, “Partners”), and is not a separate legal entity. For this reason, and mindful of its mandate as global coordinating agency for public health, WHO hereby agrees to serve as the host organization for UNITAID and to provide its Secretariat, Trust Fund, administrative and fiduciary support, and facilities. Such host arrangement enables the Secretariat, as part of WHO, to enter into contracts, acquire and dispose of properties and assets and, if necessary, institute legal proceedings for the benefit of UNITAID. It also provides an accountability framework which ensures safeguards and due diligence in the management of UNITAID resources and activities. This arrangement further enables UNITAID to make optimal use of its resources to fulfill its mission. In the implementation of this MoU, WHO will provide the services described in this MoU, including the provision of staff to the UNITAID Secretariat, as WHO actions on behalf of UNITAID.

2.2 Privileges and Immunities The privileges and immunities of WHO shall apply to the staff, funds, properties and assets supplied to or for the use of the Secretariat of UNITAID within the remit of this MoU.

2.3 WHO Rules. The hosting arrangement and the operations of the Secretariat shall in all respects (including but not limited to recruitment, delegation of authority to the Executive Secretary, procurement, financial matters, management of the Trust Fund, etc.) be administered in accordance with the WHO Constitution, WHO’s Financial and Staff Regulations and Rules, Manual provisions, and applicable policies, procedures and practices (the “WHO Rules”) and with the terms of this MoU.

2.4 Modifications to Rules. It is understood that the WHO Rules may be updated or revised by WHO from time to time as is necessary or appropriate and in accordance with mechanisms established by WHO for that purpose. WHO shall endeavor to keep the Board regularly informed of any new or revised WHO

regulation or rule that would materially impact the operations of the Secretariat, including in respect of its ability to be efficient, flexible and time-responsive.

2.5 Consistency. While the Secretariat is responsible for implementing the strategies and work plan approved by the Board and must report to the Board on the achievement of those activities and on the appropriate use of resources and while it is also expected that the Board will provide guidance to the Secretariat in achieving the objectives of UNITAID, all such activities shall be performed under the supervision of the Executive Secretary under a delegation of authority from the WHO Director General and shall be conducted in accordance with the WHO Rules. It is understood that nothing in or related to this MoU shall be or shall be construed as a derogation of WHO's constitutional requirements.

ARTICLE 3

OPERATIONS OF THE UNITAID SECRETARIAT

3.1 The Secretariat. WHO will employ staff to carry out the activities of UNITAID, which staff will be known collectively as the "UNITAID Secretariat" (also referred to herein as the "Secretariat"). The role of the Secretariat is to support UNITAID in terms of administration and operations in pursuit of UNITAID's goals and objectives. The Secretariat shall be subject to, and its activities shall be conducted in accordance with, the WHO Rules.

3.2 Secretariat as WHO Staff. All staff assigned to the Secretariat, including staff seconded to WHO for assignment to the UNITAID Secretariat, shall be staff members of WHO and will be considered by WHO as WHO officials for the purpose of the application of the privileges and immunities accorded under international law for the free exercise of their functions. In this regard, WHO will provide, or will request the United Nations to provide, the same travel and identification documents to the Secretariat staff that are provided to all WHO staff.

3.3 Organization. It is anticipated that the Secretariat will be comprised of an Executive Secretary and technical and administrative staff.

3.4 Executive Secretary Functions. The Executive Secretary shall provide overall management and leadership to the Secretariat, be responsible for the administration, direction and guidance of its work, and provide assistance to the Board in setting policies and developing strategies for UNITAID. The duties of the Secretariat staff will be determined by the Executive Secretary. The Executive Secretary will establish an organizational structure and staffing plan to meet the goals and objectives of UNITAID, in consultation with the Board, and will have responsibility for overseeing the implementation of the Secretariat's work plan and budget. The Executive Secretary will be provided with a delegation of authority from the Director-General of WHO in accordance with the WHO Rules that will permit him or her to exercise the functions of the position.

3.5 Functions of the Secretariat Subject to availability of funding and the WHO Rules, the Secretariat will perform the functions set forth on Annex D. Notwithstanding the function of the Executive Secretary to implement the work plan

and decisions of the Board, including the budget, it is understood that the WHO Director-General may cause the Executive Secretary not to implement decisions of the Board that s/he believes, after consultation with the Board (either as a whole or through its Chair), to be contrary to WHO Rules or to give rise to the possibility of inappropriate liability for WHO.

3.6 Staff Appeals. WHO will defend any appeal made by a staff member of the UNITAID Secretariat to the Administrative Tribunal of the International Labour Organization ("ILOAT"). All costs associated with such appeals will be charged to the UNITAID Trust Fund, including a prorated portion of the biannual charge made by the ILOAT to WHO, reflecting the number of appeals by WHO staff members assigned to the UNITAID Secretariat heard by the ILOAT.

ARTICLE 4

RECRUITMENT OF EXECUTIVE SECRETARY AND STAFF OF THE SECRETARIAT

4.1 Recruitment of Executive Secretary. The Executive Secretary shall be recruited in accordance with the procedures set forth in **Annex A**.

4.2 Recruitment of Other Secretariat Staff. The organizational structure of the Secretariat shall be determined by the Executive Secretary, within the overall Secretariat budget and in consultation with the Board. Secretariat staff other than the Executive Secretary will be selected by the Executive Secretary, in accordance with WHO Rules and pursuant to such authority as is delegated from the WHO Director General, and will be appointed by WHO. The paramount consideration in the appointment of Secretariat staff will be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be given to the importance of WHO's geographical distribution and gender diversity targets.

4.3 Secondments. Staff may be seconded from the Donors, Partners or other organizations to the Secretariat. WHO will establish secondment agreements in accordance with WHO Rules. Any secondments financed by a Donor will be acknowledged as part of such Donor's contribution to UNITAID. Financial statements in respect of such non-reimbursable secondments will be provided to the Board on a yearly basis.

4.4 Temporary Advisors and Non-staff Members. Temporary advisers and other non-staff members providing services under this MoU may be selected by the Executive Secretary and engaged by WHO in accordance with WHO Rules.

4.5 No Right to Reassignment. All Secretariat staff recruited pursuant to this MoU, including the Executive Secretary, will be recruited solely for service with the Secretariat. Accordingly, such Secretariat staff will not have any right to reassignment or transfer within WHO; and service time of UNITAID Secretariat staff will not be considered WHO service time in the event of future WHO employment.

4.6 Evaluation of Performance of Executive Secretary. WHO, in consultation with the Board, will develop a system and criteria for performance review of the Executive Secretariat at specified time intervals. Such criteria will be clearly articulated to all candidates and incumbents of this position.

ARTICLE 5

FINANCIAL MATTERS

5.1 Trust Fund. Contributions and other funds received by WHO for the benefit of UNITAID will be maintained and recorded within the WHO accounting systems, in a separate trust fund account or accounts (the "UNITAID Trust Fund") in the name of UNITAID (or other name, as appropriate), in accordance with the WHO Rules, including those relating to internal and external audit and oversight.

5.2 Currency. Grants to UNITAID and payments made by the Secretariat may be made in any currency. The accounting unit is the United States dollar. The equivalent in United States dollars of other currencies is established on the basis of the United Nations operational rates of exchange.

5.3 Investments; Interest. WHO shall invest the funds held in the Trust Fund in accordance with the WHO Rules for the sole and exclusive use of the UNITAID. Any interest accruing on the Trust Fund, or income from investment of the funds held in the Trust Fund, shall be compounded and credited to the amounts then held in the Trust Fund.

5.4 Use of Funds. The funds in the Trust Fund will be used to defray the costs of operating the Secretariat in accordance with the work plan approved by the Board. Payments resulting from such requests will be subject to compliance with WHO Rules to ensure appropriate monitoring of the financial accountability of grantees and other recipients and of progress towards program objectives.

5.5 Reporting. WHO shall report all receipts and expenditures in respect of the Trust Fund in accordance with the WHO Rules. Separate financial statements of income and expenditure will be prepared by the Secretariat, cleared by the Office of the Chief Accountant of WHO, and provided to the Board.

5.6 Audit. The Secretariat will be subject to internal audit and external audit review in accordance with normal WHO practice. Audit reports will be addressed to the WHO Director-General with copies to the Executive Secretary of the Secretariat.

ARTICLE 6

FEES AND COSTS

6.1 Fee Structure. The amount of Programme Support Costs (“PSC”) and other fees to be charged by WHO for its services hereunder, together with the method of its calculation, is set out in **Annex B** to this MoU.

6.2 Provision of Services. WHO will endeavor to ensure that administrative services are promptly provided in order to permit UNITAID to achieve its objectives.

6.3 Other Services. It is anticipated that day-to-day administrative services will be provided by Secretariat staff. The Secretariat will have the flexibility to out-source services, if needed, to provide more tailored or flexible support specific to the needs of UNITAID in accordance with the WHO Rules.

ARTICLE 7

PROCUREMENT PRINCIPLES

7.1 Procurement Strategies. The Parties acknowledge the importance of flexibility in the conduct of negotiations for procurement in order for UNITAID to respond to specific market dynamics. It is the understanding of the Parties that the WHO Rules will permit the procurement and distribution strategies and procedures set forth in **Annex C**.

7.2 Exclusivity Arrangements. WHO is not a party to any exclusive or similar arrangements with manufacturers or other suppliers of drugs to which WHO is bound and which would be applicable to UNITAID procurement activities, such that UNITAID would be precluded from contracting with any specific party or be obliged to contract with a specific party with respect to certain procurement.

7.3 Liability. In the event WHO for the benefit of UNITAID enters into a procurement contract utilizing UNITAID resources and/or UNITAID, in collaboration with WHO, undertakes an arrangement to make funds available to pay suppliers on behalf of beneficiary countries for procurement that the country has undertaken under its own national procurement systems, the UNITAID Donors agree:

- (i) to provide sufficient funds to UNITAID for the purpose of obtaining and maintaining adequate insurance coverage for any claims and liabilities which may arise from, or be related to, UNITAID-funded procurement and supply; and
- (ii) to indemnify WHO for all costs, expenses and claims of any kind arising from, as a result of, or in connection with such procurement or supply by or on behalf of WHO, UNITAID and/or authorized procurement agents.

ARTICLE 8

ADAPTATIONS AND EXCEPTIONS

To meet particular needs of UNITAID, WHO will promptly consider requests for adaptations of or exceptions to WHO administrative procedures and practices that demonstrably improve the functioning of the Secretariat in furtherance of the objectives of UNITAID, to the extent that such adaptations or exceptions are allowed under the WHO Rules. Such requests for adaptations or exceptions that have been granted by WHO will be recorded by WHO in a "Log of Administrative Adaptations for the UNITAID Secretariat".

ARTICLE 9

TERM AND AMENDMENT

9.1 Term. This MoU shall enter into force on the 19th day of September 2006 and shall remain in effect for three (3) years after the date of its entry into force. The MoU shall be automatically renewed for additional terms of three (3) years unless notice is provided by either WHO or the Board to the other at least four (4) months prior to the end of its term.

9.2 Termination. Notwithstanding Section 9.1, either WHO or the Donors may terminate the MoU, for any reason, during the initial term or any additional term as contemplated by Section 9.1 by giving four (4) months prior notice to the other; provided, that no such termination shall be effective prior to the first anniversary of the effective date of this MoU. WHO and the Board may agree to extend the effective date of such termination in view of staff-related or other considerations.

9.3 Settlement of Outstanding Obligations. Upon termination or expiration of this MoU, any outstanding obligations for activities commenced by WHO prior to expiration or termination of the MoU, including reimbursement to WHO for all costs incurred in relation to the need to terminate the Secretariat staff and otherwise close down the Secretariat, shall be fully satisfied by UNITAID.

9.4 Survival of Obligations. In the event of termination or expiration, the obligations assumed by the Parties hereunder shall survive such termination or expiration to the extent necessary to permit the orderly conclusion of activities, the termination or withdrawal of personnel, the return of uncommitted funds and property, the settlement of accounts between the Parties and the settlement of contractual liabilities and staff grievances (including tribunal awards) that are required in respect of any personnel, subcontractors, consultants and suppliers. Once all obligations incurred by WHO prior to termination or expiration have been fully liquidated, any funds remaining to the credit of the UNITAID Trust Fund shall be applied to the purposes of UNITAID, as directed by the Board.

9.5 Consultation. At the request of WHO or any of the Donors, consultations shall take place with reference to the implementation, modification or revision of this MoU.

9.6 Amendments. Any amendment to the present MoU shall be effected by mutual agreement of the Parties through a written document affirming to be an amendment of this MoU.

ARTICLE 10

CHANGE IN HOSTING ARRANGEMENT

It is understood that the Board may decide that it is in the best interests of UNITAID to terminate the hosting arrangement with WHO. In such an event, WHO will cease to host UNITAID as from the effective date of termination in accordance with Article 9.2. In connection with any such termination, UNITAID must reimburse to WHO all costs related to the need to terminate the contracts of the staff of the Secretariat and otherwise close down the Secretariat as provided in Article 9.

ARTICLE 11

COMMUNICATIONS, WEBSITE, LOGO, AND COPYRIGHT

11.1 Communications. The Secretariat shall adhere to the WHO Rules for internal and external communications, staff calling cards, meetings, circulation of documents and other information, requests for services and requisite clearances and authorizations.

11.2 Intellectual Property. UNITAID's website, use of a separate logo, use of WHO emblem, email address and the like shall be established and maintained in accordance with the WHO Rules. To reflect the legal status of UNITAID, the copyright notice will appear substantially as follows: "© World Health Organization (acting as the host organization for, and secretariat of, UNITAID) [year]."

11.3 Branding. UNITAID may wish to develop a distinctive physical depiction of its identity, such as branded colours, graphic elements and a logo which would uniquely identify UNITAID to all audiences. In the use of its branding, the UNITAID agrees to incorporate and clearly reflect the hosting and administrative arrangements with WHO.

11.4 Transference. Upon the termination or expiration of the hosting arrangement, WHO will transfer all rights to the trademark and tradename "UNITAID" and to copyrights, which are held by WHO as host for the benefit of UNITAID, as well as all derivatives thereof, to the entity directed by the Board, without charge (except for any actual costs incurred), free and clear of any right, title or interest on the part of WHO.

ARTICLE 12

FINAL PROVISIONS

12.1 No Waiver. Nothing in or related to this MoU or the work of UNITAID or the Secretariat, shall be or shall be construed as, a waiver, express or implied, of the privileges and immunities of WHO, of any Donor or Partner, or of any member of the Board.

12.2 Notices in Writing. Any notice or request required or permitted to be given or made under the present MoU shall be in writing.

12.3 Language of Agreement. This MoU is executed simultaneously in the languages of English, French, Spanish and Portuguese, and each such version of this MoU shall be equally authentic.

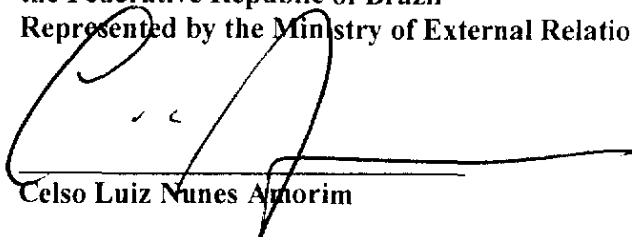
12.4 Conciliation. Any differences of opinion between the Parties arising out of or related to this MoU shall be resolved through good faith negotiation. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL) then in effect, or according to such other procedure as may be agreed between the Parties, and shall finally settle the dispute.

12.5 Endorsement by the Board. This MoU shall be submitted for endorsement to the Board at its first meeting.

Agreed and accepted as of the last signature date below, in two originals, by the undersigned duly appointed representatives of the Donors and the World Health Organization, respectively, on behalf of the Parties.

For Donors

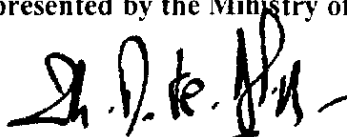
the Federative Republic of Brazil
Represented by the Ministry of External Relations



Celso Luiz Nunes Amorim

Minister of Foreign Affairs
Date: 19 SEP. 2006

the French Republic
Represented by the Ministry of Foreign Affairs



Philippe Douste-Blazy, Minister of Foreign Affairs
Date: 19 SEP. 2006

the Republic of Chile
Represented by the Ministry of External Relations



Alejandro Foxley Rioseco, Minister of Foreign Affairs
Date:

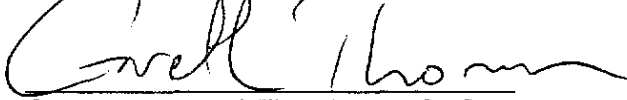
19 Sept 06

the Kingdom of Norway
Represented by the Office of the Prime Minister



Morten Wetland, Deputy Minister
Date: 19 SEP. 2006

the United Kingdom of Great Britain and Northern Ireland Represented by the
Department for International Development

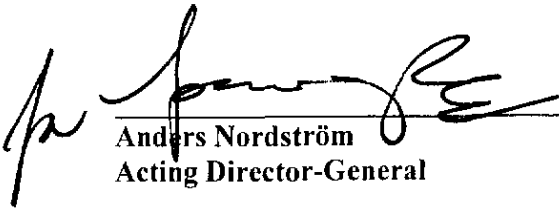


Gareth Thomas, MP, Minister for Development

Date: 19 SEP. 2006

and

For the World Health Organization



Anders Nordström
Acting Director-General

Date: 19 SEP. 2006

Annex A

Procedure for Recruitment for Executive Secretary

The process of recruitment and selection of the Executive Secretary will be conducted in accordance with WHO Rules except as provided herein and will be managed by WHO in consultation with the UNITAID Board through its Chair. More specifically, recruitment and selection of the Executive Secretary will proceed as specified in further detail below.

1. WHO will draft a post description based on the assigned duties and responsibilities, taking into account the functions of the Executive Secretary provided in this MOU. WHO will also prepare a recruitment profile setting out the education, skills, experience and competencies required. WHO will work together with the Board, through its Chair, to finalize the post description and recruitment profile.

2. An advertisement and search process will be undertaken utilizing methods to be determined in consultation with the Board, through its Chair, to include suitable publication of the post and, if requested by the Board, use of the services of an executive search firm. In view of the potentially large number of applications that could be received, WHO will screen the applications and identify any candidate who does not appear to satisfy the essential minimum requirements for selection. The full list of applicants will be provided to the selection panel, together with the results of the screening process.

3. Thereafter, a selection panel will be convened to review the applications. The selection panel shall consist of four members, including two representatives of the Board and two representatives of WHO. The selection panel will review the applications and prepare a short-list of candidates who will be interviewed by the Panel and who may be tested. It will submit its list of candidates proposed for selection, in a reasoned selection report, to the UNITAID Board for consideration.

4. The Board will then indicate its preferred candidate(s), together with an explanation as to why the candidate(s) is/are being proposed, and submit its recommendations, along with the selection panel's report, to the WHO Director-General. The Director-General, after consultation with the Board, will appoint the Executive Secretary. Upon appointment, the Executive Secretary will become a WHO staff member.

5. All Parties to the MoU acknowledge the importance of completing as quickly as possible, the process for recruitment and selection of the Executive Secretary. They agree to undertake all reasonable efforts to expedite the process and will endeavor to make themselves available to participate in, and to promptly perform, any necessary tasks for the process.

Annex B

Fee Structure

Set out below is the fee structure that will apply to WHO's agreement to serve as the host organization for UNITAID and provide its Secretariat, Trust Fund, administrative and fiduciary support, and facilities, including procurement-related services, under this MoU. This arrangement will be reviewed by the Parties on or before December 1 of 2007 and each year thereafter, and adjusted by mutual agreement as may be required for the subsequent calendar year.

It is noted that this fee structure is based on certain parameters (such as the size of the Secretariat, what services are being asked of WHO). Should these vary, the fee structure would be adjusted accordingly by mutual agreement.

(A) Administrative Fee

- Based on a Secretariat of approximately ten people the administrative fee will be US\$ 425,000 per annum. This covers administrative services for processing salaries and benefits as well as administrative costs as described in A(1) below.
- "One-off" set up costs (e.g., computer, furniture and other (as required) will be invoiced at cost).

(A)(1) The administrative fee would cover the following:

- All fixed administrative costs to support the Secretariat: accounting services; serviced office space; IT support, telecommunications support services and infrastructure (including training and website maintenance within the WHO website); travel administration; travel agent, visa and passport services; salary and entitlement administration; human resources services; medical services; staff health insurance; security and staff services; registry; document storage; routine internal and external audit; and, subject to the parameters set out below, financial management, special audit and legal services. Storage space may be charged separately if demand exceeds normal requirements.

(A)(2) The above administrative fee does not include the following:

- Additional amounts for the following services or costs will be provided on a reimbursable or cost sharing basis in accordance with existing procedures, based on actual costs incurred: video and communication equipment; office equipment such as computers, calculators etc; use of conference rooms and servicing of meetings; travel and visa expenses; document reproduction services; telecommunication charges and special devices or accessories (e.g., BlackBerries); "special" audit and "special" legal services (see

explanation under Note 3 below); any costs, payment orders or awards associated with Secretariat staff complaints, appeals or grievances (whether in connection with WHO internal appeal and grievance bodies or to the Administrative Tribunal of the International Labour Organization); and any other liabilities arising out of activities performed under this MoU, including but not limited to claims by suppliers, grantees or recipients of products or services.

(B) Percentage based fees

The fixed administrative costs do not include the fees related to Programme Implementation work by WHO, nor the special arrangements now envisaged for the administration of the trust fund based on a new procurement model for which a percentage based fee applies. Such percentages are applied to income received for programme activities at the following rates. (It is understood that fees for additional activities, including any new procurement arrangements not described here, will be determined by mutual agreement.)

Percentage under Joint Programming Arrangement with UNICEF (or other UN)	1.0%
Percentage for processing of funds for procurement by Clinton Foundation	1.0%
Percentage for GDF managed procurement:	3% (of procurement related income)
Percentage for Procurement of Second Line ARV Drugs based on the Proposed New Model:	1.5%
Percentage for Technical Support: (e.g. pre-qualification)	13% (of technical support income)

Notes:

1. The higher rate charged for Technical Support is because the activities within this type of work tend to entail more significant cost than bulk procurement.
2. The special character of the second line ARV procurement model requires special administrative arrangements and work outside the norm for WHO. As such, normal fee structures will not apply to this arrangement and the following adjustments have been made along the following lines:
 - A percentage fee of 1.5% for this procurement model covering accounting, investment, and other trust fund administration. The Trust Fund management, now envisaged, is somewhat more complex and "non standard" than any other arrangement hosted by WHO.

3. Any extraordinary work, such as "special" audit or legal work, would be billed at cost. ("Special" audit refers to non-routine external or internal audit work specific to UNFPA. "Special" legal work refers to legal services provided by WHO in a calendar year pursuant to this MoU, when the cost of such services exceeds the equivalent of twenty per cent (20%) of the average remuneration paid to a P4 staff member during the period in question.)

Annex C

Procurement Strategies and Procedures

1. The Donors intend to use the financial resources of UNITAID to have maximum impact on accelerated access to critical high quality medicines and diagnostics to fight HIV/AIDS, tuberculosis and malaria; to purchase these medicines in a manner that ensures the cost-effective use of UNITAID Secretariat staff; and to enable access to these products by recipient countries through a system that addresses country demand, respects and reinforces existing national structures and procurement practices, and is coordinated with the broader global public health architecture by UNITAID partners. (As used in this Annex, reference to medicines and diagnostics may include related services as needed to ensure that the procurement and availability of products is accomplished in accordance with objectives stated.)

2. WHO intends to support these goals of UNITAID and to facilitate the procurement of the above mentioned medicines and diagnostics at reduced prices in a manner consistent with applicable WHO Rules, including principles such as best value for money, international competition and compliance with international quality standards. The Parties also acknowledge the importance of UNITAID responding to specific market dynamics and disease burden. Therefore, the Parties wish to set forth their understanding of certain basic principles and practices related to procurement involving the use of UNITAID resources, as follows.

3. Procurement principles.

3.1 Selection of Beneficiary Countries and Programs. Consistent with the eligibility criteria defined in UNITAID Constitution, the selection of beneficiary countries and programs will be based on principles of fairness, integrity and transparency. The eligibility criteria will be applied in a consistent and objective manner. Among the factors that will be considered in determining beneficiary countries for all UNITAID programs are disease burden; national treatment guidelines and the compliance of such national treatment guidelines with WHO guidelines; existing program performance of the recipient country; and/or the presence of programs and staff to ensure effective implementation of UNITAID-supported programs in the recipient country.

3.2 Selection of products. UNITAID funds managed and disbursed by WHO will be used to procure products that are consistent with WHO technical guidelines. In exceptional cases in which a novel product, consistent with the quality criteria detailed in paragraph 3.5 below, is not yet reflected in WHO guidelines, procurement with UNITAID resources may be possible based on agreement between WHO and UNITAID Board, as advised by independent technical experts.

3.3 Selection of procurement approach.

3.3.1 The process of establishing reduced or most competitive prices and the conclusion of procurement contracts with suppliers of products may either be undertaken by the UNITAID Secretariat

(with the assistance of organizations having particular expertise in this field where appropriate) or by procurement agents designated by UNITAID in accordance with the procurement principles set out in WHO Rules. The UNITAID Board, in coordination with WHO, may also decide to make funds available to pay suppliers on behalf of beneficiary countries under an arrangement that would permit beneficiary countries to themselves conduct procurement of certain drugs and diagnostics, through their own national procurement systems.

- 3.3.2 Regardless of whether the process of establishing reduced or most competitive prices and the conclusion of contracts are undertaken by the UNITAID Secretariat or authorized procurement agents or by the recipient countries through their own procurement systems (as referenced above at subparagraph 3.3.1), it is expected that the approach most suited to obtain "best value for money" will vary depending on product-specific market dynamics. As examples, the approach may vary from tenders to direct negotiations; may seek one or multi-year contracts; and/or may involve for each product one or more supplier(s) at the pharmaceutical intermediate, active pharmaceutical ingredient ("API") and formulation levels.

3.4. Selection of suppliers. All eligible suppliers should have fair access to whichever procurement approach UNITAID or its implementing Partner(s) adopt, consistent with relevant and transparent criteria such as, but not limited to, compliance with quality assurance standards, production capacity, and financial solvency. To sustain competition and avoid bias, a transparent and documented process, consistent with WHO procurement principles, will invite suppliers to offer best prices, and supply medicines and diagnostics at reduced prices, to UNITAID or its authorized procurement agent(s) or to beneficiary countries under their own procurement systems that may reference ceiling prices on specific products, as the case may be. When appropriate, the supply of any single product will be shared by more than one supplier to sustain competition and minimize risks associated with supply shortages. Justification of the final selection of suppliers will be provided as part of contract review procedures.

3.5. Assurance of quality.

- 3.5.1 WHO/UNITAID will disburse funds for the procurement of drugs, diagnostics, nutritional supplements and other health products so long as these products comply with established international standards which assure their quality, safety and efficacy.
- 3.5.2 All pharmaceutical products shall be in compliance with national regulatory requirements and with WHO standards for good manufacturing practices (GMP).

- 3.5.3 For other products (e.g., diagnostics and nutritional support), the quality standard to be used will be agreed on a case-by-case basis between WHO and UNITAID, which will include considerations such as compliance with WHO-defined international good manufacturing practices (GMP).
- 3.5.4 For single and limited-source HIV/AIDS, tuberculosis and malaria medicines, the applicable standard for UNITAID will be the quality criteria of the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM) set out in the "Guide to the Global Fund's Policies on Procurement and Supply Management", dated May 2005, which includes, but is not limited to, WHO prequalification.
- 3.5.5 WHO/UNITAID or its authorized procurement agent(s) may execute contracts with a supplier before the supplier reaches the relevant quality standard(s) for the particular product(s) to be procured – with a view to expediting delivery once the supplier and product(s) have been found to meet the relevant quality standard(s). Any such contracts will always be subject to an understanding with the supplier that the actual implementation of the contract will be and remain dependent on compliance with the agreed relevant standard(s), as determined by agreement between WHO and the UNITAID Board in accordance with the provisions in subparagraph 3.2.

3.6 Consistency with applicable law. All contracts entered into by WHO/UNITAID or its authorized procurement agent(s) shall be consistent with applicable law, including applicable patent law. Contracts between WHO/UNITAID or its authorized procurement agent(s) and suppliers of products to be purchased with UNITAID resources will be subject to the condition that the manufacture and supply of the products is and remains consistent with applicable national and international law, including patent law. Similarly, memoranda of understanding with beneficiaries – which will specify product-specific volume requirements – will require that these beneficiaries import UNITAID-supported products in a manner consistent with applicable national and international laws, including in respect of national marketing authorizations and patent rights.

4. Procurement under National Procurement Procedures. As noted above, it is anticipated that beneficiary countries may themselves conduct procurement of drugs and/or diagnostics (currently, second-line ARV drugs), through their own national procurement systems, and, in such cases, the UNITAID Board, in coordination with WHO, would make funds available to pay suppliers on behalf of the purchasing beneficiary country. The Parties agree that, in such arrangements, national procurement should be conducted in a manner which is consistent with the foregoing principles and that provisions to this effect will be incorporated into the MoUs between the beneficiary country and WHO/UNITAID. The national procurement procedures utilized would also be expected to conform with the international procurement standards of non discrimination, transparency, integrity, competitive

supply and cost effectiveness. These conditions would also apply, in the event the country conducts such procurement through a designated procurement agent.

5. Procurement practices. The Parties acknowledge the importance of efficiency in all practices and procedures related to UNITAID procurement, consistent with the principles above. WHO will undertake all reasonable efforts to expedite processes and disburse funds to enable timely and uninterrupted supply of products purchased with UNITAID resources, provided always that applicable WHO Rules are fully complied with. The Parties agree that early and ongoing dialogue on these matters – to outline expected approaches, to review template contracts, to agree on appropriate selection documentation, etc. – will be important to accomplish these objectives.

Annex D

Functions of the UNITAID Secretariat

Subject to availability of funding and the WHO Rules, the Secretariat will perform the functions set forth below:

- implement the strategies and work plan endorsed by the Board and report to the Board on the achievement of such strategies and work plan and on the use of resources;
- be responsible for carrying out and managing the day-to-day operations of UNITAID and coordinating implementation of the work plan;
- provide support to the Consultative Forum and the Board and facilitate internal and external communications (including in respect of advocacy);
- prepare proposed work plans and budgets for approval by the Board;
- coordinate and facilitate technical support and advice to the Board by Partners;
- execute memoranda of understanding, grant agreements and other financial commitment agreements, purchase contracts, consultancy contracts, service agreements and other legal arrangements (to be entered into by WHO for the benefit of UNITAID), as is necessary to support its goals and priorities, as approved by the Board;
- request the trustee to make disbursements;
- administer, coordinate and manage grant agreements, contracts and other commitments approved by the Board which are entered into with Partners, consultants, suppliers and others, as the case may be;
- manage relationships with and coordinate activities of Partners to ensure programme and financial monitoring and reporting;
- prepare and submit for scrutiny by the Board, a six-monthly progress report on implementation of the work plan and budget;
- prepare or coordinate such other technical and financial reports on operations as may be agreed with the Board. In addition, WHO will report, as necessary, on any related issues in its capacity as host organization of UNITAID;

- undertake a periodic risk review and assessment of the performance of recipient countries and other grantees in coordination with Partners from time to time;
- any administrative or oversight functions required in the execution of the above.