

**C73779-APO-07-GM**

Memorandum of Agreement

This Memorandum of Agreement (hereinafter referred to as the "Agreement") is made between the United Nations Office for Project Services ("UNOPS") and Population Services International (PSI) duly constituted under the laws of United States of America (the "Organisation") in connection with activities further described in Annex A and hereinafter referred to as the "Project" financed by the Three Diseases Fund ("3D Fund"), managed by UNOPS on behalf of the Donor Consortium of the 3D Fund acting through their Fund Board.

WHEREAS the Donor Consortium has established and provided funding to the 3D Fund, which aims to contribute to achieving the UN Millennium Development Goals in Myanmar by reducing the burden of communicable disease morbidity/ mortality. Activities will be undertaken to reduce transmission and enhance provision of treatment and care for HIV and AIDS, tuberculosis (TB) and malaria.

WHEREAS the Fund Board, to which the Donor Consortium has delegated the authority to select and approve projects and allocate funding, has, at a meeting held on 15-16 March 2007 approved the Project, details of which are set out at Annex A, and the budget as set out in Annex B, and agreed to the allocation of funds to the Organisation (the "contribution").

WHEREAS the Organisation is ready and willing to accept such funds from the 3D Fund through the administration of UNOPS for the above mentioned Project on the terms and conditions set out herein and has agreed that it shall be undertaken without discrimination, direct or indirect, because of race, ethnicity, religion or creed, nationality or political belief, gender, sexual orientation, disability or any other circumstances.

WHEREAS UNOPS has appointed the Chief Executive Officer, 3DF (the "CEO") as its representative for all day-to-day matters concerning the administration of the 3D Fund programme in Myanmar.

NOW, therefore, the parties hereto agree as follows:

1. Responsibilities of the Organisation

a. The Organisation hereby agrees to undertake the activities described in the Project Proposal which has been approved by the Fund Board and is attached as Annex A and Annex B and which form an integral part of this Agreement.

b. None of the funds provided pursuant to this Agreement may be used for any purposes other than those expressly set forth in Annex A. Without prejudice to the generality of the foregoing, no funds may be used:

- i. to make payment to Government agencies' bank accounts.
- ii. for the following charges: customs duty for procurement, previous obligations, bad debts, fines and penalties, land and property, political or religious propaganda.



2. Responsibilities of UNOPS

UNOPS agrees to provide payment of funds as specified in Article 4 below.

3. Duration

This Agreement will come into effect on signature by both parties and shall expire 1 November 2008. Should any party wish to extend the duration of this MOA, it should inform in writing the other party accordingly and provide justification at least two months before this MOA ends. Any extension is subject to a formal amendment to this Memorandum of Agreement.

4. Payments

a. UNOPS shall provide funds to the Organisation in a maximum amount of up to USD 1,032,242.00. (United States Dollars One Million Thirty Two Thousand Two Hundred and Forty Two) according to the schedule set out below, subject to the Organisation's submission of timely and accurate reports:

Maximum USD amount in figures and in words	Deliverables	Target Date
USD 206,448.00 (United States Dollars Two Hundred Six Thousand Four Hundred and Forty Eight)	upon signature of this Agreement by both parties and submission of invoice	15 November 2007
USD 619,346 (United States Dollars Six Hundred Nineteen Thousand Three Hundred and Forty Six)	upon certification by the CEO of receipt and acceptance of the semester Progress Report and financial report on the use of funds together with an invoice for the period 1 November – 31 December 2007	15 January 2008
USD 103,224.00 (United States Dollars One Hundred Three Thousand Two Hundred and Twenty Four)	upon certification by the CEO of receipt and acceptance of the semester progress report and financial report on the use of funds together with an invoice for the period 1 Jan – 30 June 2008	15 July 2008
USD 103,224.00 (United States Dollars One Hundred Three Thousand Two Hundred and Twenty Four)	upon certification by the CEO of receipt and acceptance of the final progress report and final financial report on the use of funds together with an invoice	31 December 2008

b. All amounts in this Article 4 are expressed in US dollars. Payment amounts shall be deposited into the Organisation's bank account in accordance with the payment schedule set out in article 4. The organization's bank account details are as follows:

Bank name: Wachovia Bank
 Bank Postal Address: 1850 M Street NW., Washington DC, 20036
 Name of Account: Population Services International



Bank Account Number: A/C no. 2000013843430
Currency of Bank Account: USD
SWIFT CODE: PNBUS33

- c. The maximum amount of payment of such funds is not subject to any adjustment or revision because of (price) currency fluctuations.
- d. No disbursements under this Agreement will be made to Government agencies bank accounts.
- e. All in country payments to national partners will be made in local currency.
- f. Under this Agreement, the Organisation shall not charge administration cost overheads as a fixed percentage of the project budget, however technical support and management costs can instead be included in the budget as costs related to in-country implementation of the project, provided that they do not exceed 7% of total costs, excluding procurement, for which such costs do not exceed 4%.
- g. The Organisation may vary the budgeted cost of any single input in the budget funded by the 3D Fund, provided that (a) the variation is, cumulatively, not more than ten percent (10%) of the major budget heading (see UNOPS chart of accounts); (b) the variations are within the scope of the work plan, not new or unplanned activities; and (c) the total amount approved by UNOPS is not exceeded. Any variation exceeding ten percent (10%), or which involve new, unplanned activities as addressed in the paragraph below, requires prior written request and consent of the UNOPS and submission of a detailed justification and an appropriately revised budget.
- h. All progress reports required to be submitted pursuant to this article 4 shall be in the form set out in Annex C. All interim financial reports shall be in the form set out in Annex D.

5. Audit

- a. The Organisation must submit a yearly certification of accounts by an international reputable audit firm by 30 April of the following year. The Organisation shall have the Financial Statement relating to the Fund audited in accordance with the International Standards on auditing.
- b. If the Organisation does not have its own internationally recognised auditors, UNOPS will appoint external auditors to satisfy itself that the financial control systems of the Organisation are sound and that the accounting returns are true records.
- c. In addition to the audit report on Financial Statement, the auditors shall provide the Organisation and UNOPS with a management letter addressing the adequacies of the accounting and internal control systems.
- d. The Terms of Reference of audits will be drawn by UNOPS. The cost of such audits will be charged to the Contribution.
- e. Adverse and disclaimer opinions will result in suspension of any further disbursement to the Organisation by UNOPS: until the Organisation satisfactorily demonstrates that issues identified have been resolved.
- f. If the Organisation does not submit its audited financial statements within the deadline set in their contract, UNOPS shall appoint an independent auditor to audit the Financial Statements of the Organisation.

- g. UNOPS may suspend disbursement of funds until such time the audit report has been received, terminate the contract and/or issue recovery orders.
- h. UNOPS may, at any time, check the Organisation's accounts or order a further audit of financial records by a reputable audit firm chosen by UNOPS. The terms of reference of audits will be drawn by UNOPS. The cost of such audits will be charged to the Contribution.
- i. In any instance, the Organisation shall furnish, compile and make available at all times to UNOPS and/or its auditors any records or information, oral or written, which either UNOPS or its auditors may reasonably request in respect of the funds received by the Organisation. Upon receipt of a request by email or any other form of written communication from UNOPS and/or its auditors, the Organisation shall, within 10 working days, forward to UNOPS and/or its auditors such records or information as so requested.

6. Records and Reports

a. Reporting obligations by the Organisation are as follows. The Organisation will draw up interim and final narrative and financial reports. These reports shall cover the Project as a whole, regardless whether or not parts thereof are funded from other resources than the Three Diseases Fund. If the Organisation fails to supply UNOPS with adequate and timely reports, UNOPS may terminate this MOA in accordance with article 9m), and recover the amounts not substantiated.

- i. **Technical / narrative progress reports (Annex C)**
The organisation shall transmit to UNOPS in the form set out in Annex C, semester technical reports on the progress of the activities financed by the contribution as per Annex A. Such reports must be received, for each of the semesters covered, no later than two weeks after the last day of the period covered.
- ii. **Financial reports (Annex D)**
Financial reports of receipts and expenditures shall be provided to UNOPS per the schedule outlined in 4. Payments above in the form set out in Annex D. The reporting of expenditures shall also include the administrative cost as direct cost of the activity.
- iii. **Final technical / narrative reports**
Within 60 calendar days after completion of the Project, the Organisation shall provide UNOPS with a final report on the project in the form set out in Annex C, indicating the progress made toward the goals of the activities undertaken.
- iv. **Final Financial reports**
Within 60 calendar days after completion of the Project, the Organisation shall provide UNOPS with a final report on the project in the form set out in Annex D with respect to all income and expenditures made from the Contribution. The reporting of expenditures shall also include the administrative cost as direct cost of the activity.
- v. The Organisation shall submit any additional reports as may reasonably be required by UNOPS in connection with its obligations to submit reports to the donors.
- vi. The Organisation shall submit a yearly inventory list of non expendable equipment.



b. All reports must be provided in English and be as per the formats set out in the abovementioned Annexes.

c. The Organisation shall maintain clear, accurate and complete records in respect of the funds received under this Agreement. The Organisation's books and records shall be maintained in such a manner that the receipts and expenditures relating to such funds will be shown separately on such books and records in an easily accessible and transparent form. In addition, the Organisation shall maintain a comprehensive file in respect of the Contribution, including but not limited to:

- i. the initial proposal submitted by the Organisation, and any documentation relating to the process leading up to an amended and final proposal;
- ii. the final proposal;
- iii. a copy of this Memorandum of Agreement, signed by both parties;
- iv. any amendments to the Memorandum of Agreement;
- v. copy of interim technical reports submitted to the CEO;
- vi. copy of interim financial reports on the use of funds;
- vii. any correspondence with the CEO, etc., and
- viii. final reports to be submitted in accordance with paragraph a) above.

d. Any interest earned from funds granted under this Agreement shall be returned to the Fund or used with the formal written agreement of UNOPS for purposes as set forth in the approved work plan.

e. All funds which remain unutilized after completion of activities funded by the Contribution shall be returned by the Organisation to UNOPS within 60 calendar days, or shall be otherwise disposed of in consultation with and with the written consent of UNOPS.

f. The Organisation shall maintain complete and accurate records of supplies, equipment and other property purchased with 3D Funds and shall take periodic physical inventories of all equipment, property and non-expendable materials and supplies. The partner institution shall provide UNOPS with records on such equipment, property and supplies at such time and in such form as UNOPS may reasonably request.

g. Non expendable equipment purchased by the Organisation with Fund resources shall remain the property of the Fund unless otherwise provided for in Annex A. An inventory of non expendable equipment – i.e. items valued at US\$500 or more and other attractive items – must be maintained by the Organisation.

h. All funds generated from project activities will be used exclusively for purposes set forth in the approved work plan.

7. Information and Communications

a. The Organisation shall be obliged to display prominently the 3D Fund logo at service delivery sites. In addition, the Organisation shall be obliged to credit the Three Diseases Fund in any promotional materials as may be directed by the CEO. The intellectual property rights attached to the logo of the 3D Fund, shall remain at all times with 3D Fund.

b. The Organisation shall keep the CEO informed of all activities pertaining to the Project and shall consult with the CEO as circumstances arise which may have a bearing on the status of the Organisation in Myanmar or may affect the achievement of the Project objectives, with a view to reviewing the Project Description and Budget (annexes A and B) and the implementation of the Project.





c. The Organisation authorizes UNOPS to communicate or publish its name, the maximum amount of the grant, and a description of the activities funded under this MOA. A derogation to this clause may be discussed with UNOPS should the communication or the publication of such information present a danger to privacy of the beneficiaries of the activities, to security, or to the ability of the Organisation to deliver its task. UNOPS takes the final decision.

d. All correspondence and reports regarding the implementation of this Agreement shall be in the English language and should be addressed to:

For UNOPS:

Mr. Mikko J. K. Lainejoki
CEO, 3D Fund
UNOPS
No. 137/1 ThanLwin Road, Kamauyt,
Yangon, Myanmar
Tel: +95-1-534 498 MikkoL@unops.org

For the Organisation:

Mr. John Hetherington
PSI, Country Director
15/C, Aung Min Gaung Street,
Kamaryut, Yangon, Myanmar
Tel.: +95-1-526096|526173|526849|503718
jhetherington@psimyanmar.org

e. All correspondence regarding disputes or termination of this Agreement, or changes in the implementation schedule should be addressed to:

For UNOPS:

Mr. Sunil Bhargava
Regional Director, APO
UN, 2nd Floor Service Building
Rajdamnern Nok Avenue
Bangkok 10200, Thailand
Tel: 66-2-2881595
Copy to
Mr. Mikko J. K. Lainejoki
CEO, 3D Fund
UNOPS
No. 137/1 ThanLwin Road, Kamauyt,
Yangon, Myanmar
Tel: +95-1-534 498 MikkoL@unops.org

For the Organisation:

Mr. John Hetherington
PSI, Country Director
15/C, Aung Min Gaung Street,
Kamaryut, Yangon, Myanmar
Tel.: +95-1-526096|526173|526849|503718
jhetherington@psimyanmar.org
Copy to
Ms. Jayne Rowan
Finance Director
15/C, Aung Min Gaung Street,
Kamaryut, Yangon, Myanmar
Tel.: +95-1-526096|526173|526849|503718
jrowan@psimyanmar.org

8. Procurement, equipment and assets

a. Procurement within Myanmar, whether for supplies or services, must be made from the private sector exclusively. Restrictions may be imposed by the Donors. As is common practice, no salaries, consultancy fees or honoraria can be paid to employees of the State.

b. In its procedures for the procurement of goods, services or other requirements with funds made available by the Three Diseases Fund as provided for in the Budget under this MOA, the Organisation shall ensure that, when placing orders or awarding contracts, it will safeguard the principles of highest quality, economy and efficiency and that the placing of such orders will be based on an assessment of competitive quotations, bids or proposals, unless otherwise agreed to



by UNOPS. The Organisation undertakes to take all necessary precautions to avoid conflicts of interests, favouritism, or corrupt practices in the execution of this Memorandum of Agreement.

c. Equipment purchased by the Organisation with funds supplied by the 3D Fund shall be the property of the 3D Fund and shall be used for the purpose indicated in Annex A throughout the period of this Agreement. At the end of the period covered by this Agreement, UNOPS will decide upon the disposal of such equipment in consultation with the Organisation.

d. In cases of total damage, theft or other loss of property made available to the Organisation, the Organisation shall provide UNOPS with a comprehensive report, including a police report where appropriate, and any other evidence giving full details of the event leading to the loss of the property.

e. Essential drugs and non-pharmaceutical medical supplies to be procured under the 3D Fund must meet internationally recognised quality criteria.

All medicines to be placed on the market in Myanmar must be registered by the Food and Drug Administration of Myanmar after an evaluation of scientific documentation. Such evaluation and laboratory testing are mandatory regardless of being registered and used in other countries with stringent regulatory requirements.

Around 9,000 products are currently registered in Myanmar. The Food and Drug Administration is also responsible for inspection of pharmaceutical manufactures to assess compliance with Good Manufacturing Practices (GMP) and for inspection of pharmacies.

9. General Provisions

a. This Agreement and the Annexes hereto shall form the entire Agreement between the

Organisation and UNOPS, superseding the contents of any other negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Agreement.

b. The Organisation acknowledges that UNOPS and its representatives have made no actual or implied promise of funding except for the amounts specified in this Agreement. The Organisation furthermore commits itself to promptly inform UNOPS should the Organisation access or in anyway uses funds from other sources than the Three Diseases Fund for the implementation of the activities subject of this MOA as described in Annex A. If any of the funds are returned to UNOPS or if this Agreement is rescinded, the Organisation acknowledges that neither the 3D Fund nor UNOPS will have further obligations to the Organisation as a result of such return or rescission.

c. The Organisation shall carry out all activities described under Annex A with due diligence and efficiency. Subject to the express terms of this Agreement, it is understood that the Organisation shall have exclusive control over the administration and implementation of the activities referred to in Annex A and that UNOPS shall not interfere in the exercise of such control. However, both the quality of work and the progress being made toward successfully achieving the goals of such activities shall be subject to review by UNOPS. If at any time UNOPS is not satisfied with the quality of work or the progress being made toward achieving such goals, UNOPS may in its discretion (i) withhold payment of funds until in its opinion the situation has been corrected; (ii) require the return of all or any goods and/or equipment purchased by the Organisation with the funds provided pursuant to this Agreement; (iii) declare this Agreement terminated by written notice to the Organisation as described in paragraph m) below; and/or (iv) seek any other remedy as may

