

No. 1037

**UNITED NATIONS
(UNITED NATIONS DEVELOPMENT PROGRAMME)
and
UNIVERSAL POSTAL UNION**

**Executing Agency Agreement (with annex). Signed at Berne
on 11 July 1990, and at New York on 17 July 1990**

Authentic texts of the Agreement: English and French.

Authentic text of the annex: English.

Filed and recorded by the Secretariat on 17 July 1990.

**ORGANISATION DES NATIONS UNIES
(PROGRAMME DES NATIONS UNIES
POUR LE DÉVELOPPEMENT)
et
UNION POSTALE UNIVERSELLE**

**Accord en tant qu'agent d'exécution (avec annexe). Signé à
Berne le 11 juillet 1990, et à New York le 17 juillet 1990**

Textes authentiques de l'Accord : anglais et français.

Texte authentique de l'annexe : anglais.

Classé et inscrit au répertoire par le Secrétariat le 17 juillet 1990.

EXECUTING AGENCY AGREEMENT¹ BETWEEN THE UNITED NATIONS DEVELOPMENT PROGRAMME AND THE UNIVERSAL POSTAL UNION

The United Nations Development Programme and the Universal Postal Union (hereinafter called the "Parties"),

Considering that the General Assembly of the United Nations has established the United Nations Development Programme (hereinafter called the "UNDP") to support and supplement the national efforts of developing countries to accelerate their economic and social development;

Mindful of the desire of the General Assembly that Organizations of the United Nations system should play the role of partners in this common endeavor;

Conscious of the readiness of the Universal Postal Union (hereinafter called the "Executing Agency") to participate in technical co-operation activities of the UNDP with recipient Governments, designed to give effect to the resolutions and decisions of the United Nations General Assembly, the Economic and Social Council and the UNDP Governing Council (hereinafter referred to as the "UNDP Governing Bodies"); and

Determined to enhance the effectiveness of the UNDP as an instrument of international development co-operation with developing countries;

Have agreed as follows:

Article I. SCOPE OF THIS AGREEMENT

The Parties recognize their complementary roles in the field of international development co-operation and hereby agree to join efforts to maintain close and continuing working relationships in order to achieve their respective mandates as well as their individual and common purposes. The Executing Agency recognizes the role of leadership of the UNDP within the United Nations system for the achievement of those purposes, and agrees to participate in partnership with the UNDP and the recipient Governments concerned in the execution of technical co-operation activities (hereinafter referred to as "Project(s)"). The relationship between the Parties in the execution of such Projects shall be governed by this Agreement.

Article II. CONDITIONS OF EXECUTION OF PROJECTS

1. The basic conditions of execution of Projects by the Executing Agency hereunder shall be those set forth in the relevant and applicable resolutions and decisions of the UNDP Governing Bodies and such agreements as the UNDP may enter into with recipient Governments. The particular conditions of and the specifications relating to such Projects shall be as set forth in such Project Documents or other similar instruments as the UNDP, the Executing Agency, and the recipient Government may conclude (hereinafter called "Project Documents").

2. The text of the Standard Basic Assistance Agreement with Governments in current use by the UNDP is annexed to this Agreement. The UNDP shall consult

¹ Came into force on 17 July 1990 by signature, in accordance with article XVII.

with the Executing Agency on any substantial variation in that text which it proposes to adopt for general use, and shall provide the Executing Agency with copies of individual signed Agreements.

Article III. THE UNDP RESIDENT REPRESENTATIVE

The Parties recognize that the UNDP Resident Representative in a country has full responsibility and ultimate authority on behalf of the Administrator of the UNDP for all aspects of the UNDP programme in the country concerned. The UNDP Resident Representative, in that capacity, acts as team leader in relation to the representatives of the agencies participating in the Programme. The Resident Representative also has the responsibility to assist the recipient Government, as may be required, in co-ordinating the UNDP Programme with other national, bilateral and multilateral programmes within the country. For this purpose, the Executing Agency agrees to keep the Resident Representative informed on the planning and formulation of its projects.

Article IV. PROJECT CO-OPERATION

The Parties shall co-operate fully with each other and with the recipient Government concerned in the execution of Projects with a view to the realization of the objectives described in the Project Documents. The Parties shall consult with each other with respect to any matters which might affect the successful completion of any such Projects.

Article V. INFORMATION REGARDING PROJECTS

1. The Parties shall from time to time exchange views with each other and with the recipient Government on the progress of Projects, the cost thereof and the benefits derived therefrom, and each shall comply with any reasonable request for information which the other may make in respect of such matters. The Executing Agency shall furnish the UNDP with periodic reports on the execution of Projects at such times and in such forms as may be agreed to by the Parties.

2. The UNDP and the recipient Government may at any time observe the progress of any Projects carried out by the Executing Agency under this Agreement, and the Executing Agency shall afford full facilities to the UNDP and the recipient Government for this purpose.

Article VI. CONDITIONS OF PROJECT SERVICES

1. With a view to securing the highest standards of efficiency, competence and integrity in the execution of Projects, the UNDP shall develop conditions of service for project staff in consultation with organizations of the United Nations system. The Executing Agency agrees to give sympathetic consideration to the adoption of any such conditions of service.

2. The Executing Agency agrees to observe to the maximum extent possible the principles of international competitive bidding in the procurement of goods and contracting of services for Projects. The Executing Agency shall, in that context, give consideration:

(a) To the requirements of the UNDP Governing Bodies to allow a margin of preference in procurement from developing countries and under-utilized major donor countries;

(b) To the need to make use of the various currencies available to the UNDP.

3. Experts, consultants and suppliers of goods and contractual services and in general all persons performing services for the Executing Agency as part of a Project shall in all cases meet the highest standards in terms of qualifications and competence, and be acceptable to the UNDP.

Article VII. AGENCY STATUS AND ACCOUNTABILITY

In the execution of Projects, the Executing Agency shall have the status of an independent contractor *vis-à-vis* the UNDP. The Executing Agency shall be accountable to the UNDP for its execution of such Projects.

Article VIII. INTELLECTUAL PROPERTY

1. Ownership of patent rights, copyright rights, and other similar rights to any discoveries, inventions or works resulting from execution of Projects under this Agreement (hereinafter called the "Patent Rights") shall vest in the UNDP, in accordance with the requirements of the Standard Basic Assistance Agreement between the UNDP and the Government concerned.

2. The Executing Agency shall inform the UNDP promptly of any occasion to claim or assert ownership to such Patent Rights, and of the steps it has taken to secure the Patent Rights. The Executing Agency agrees to take such steps as are necessary, in consultation with the UNDP and the recipient Government concerned, to secure the protection of such Patent Rights through registration or otherwise in accordance with applicable law, and to ensure that recipient Governments receive such licenses as necessary, to permit them to use or exploit such Patent Rights.

Article IX. COSTS OF PROJECTS

1. The UNDP undertakes to meet all costs directly incurred by the Executing Agency in the execution of Projects, in the amounts specified in the project budgets forming part of the Project Documents or as otherwise agreed between the Parties. It further undertakes to provide the Executing Agency with advances of funds in such amounts and currencies as will assist it in meeting current expenses of such Projects.

2. The UNDP undertakes to share in such other costs, including undistributed costs of execution of Projects, as the Executing Agency may incur in the provision of services to the UNDP under this Agreement, in amounts determined in pursuance of the resolutions and decisions of the UNDP Governing Bodies.

3. The Executing Agency shall be responsible for discharging all commitments and obligations with third parties, incurred in the course of execution of Projects pursuant to this Agreement. The UNDP shall not be responsible for any costs other than those specified under paragraphs 1 and 2 of this Article.

Article X. CURRENCY AND RATES OF EXCHANGE

1. The Parties shall consult from time to time regarding the use of currencies available to them, with a view to the effective utilization of such currencies.

2. The United Nations operational rate of exchange shall apply for currency conversions between the UNDP and the Executing Agency under this Agreement.

Article XI. FINANCIAL RECORDS AND ACCOUNTS

1. The Executing Agency shall maintain accounts, records and supporting documentation relating to Projects, including funds received and disbursed by the

Executing Agency, in accordance with the Executing Agency's Financial Regulations and Rules insofar as applicable.

2. The Executing Agency shall furnish to the UNDP periodic reports on the financial situation of Projects at such time and in such form as the UNDP may request.

3. The Executing Agency shall cause its External Auditor or an independent external auditor to examine and report on the Executing Agency's accounts and records relating to Projects, and shall make such external auditor's reports available to the UNDP.

4. Without restricting the generality of the foregoing provisions, the Executing Agency shall as soon as possible after the close of each UNDP Financial Year submit to the UNDP audited statements of account showing the status of funds provided to it by the UNDP to finance Projects.

5. The Executing Agency shall close the accounts of each Project as soon as practicable, but normally no later than twelve months after the completion of the work set out in the Project Documents or termination of a Project. Provisions shall be made for unliquidated obligations valid at the closing of the accounts.

Article XII. SUSPENSION OR TERMINATION OF ASSISTANCE

1. The Parties recognize that the successful completion and accomplishment of the purposes of a Project are of paramount importance, and that the UNDP may find it necessary to terminate a Project, or the responsibility of the Executing Agency for execution of such a Project, should circumstances arise which jeopardize successful completion or the accomplishment of the purposes of such a Project. The provisions of this Article shall apply to all such situations.

2. The UNDP shall consult with the Executing Agency if any circumstances arise which, in the judgement of the UNDP, interfere or threaten to interfere with the successful completion of a Project, or the accomplishment of its purposes. The Executing Agency shall promptly inform the UNDP of any such circumstances which might come to the Executing Agency's attention. The Parties shall co-operate towards the rectification or elimination of such circumstances and shall exert all reasonable efforts to that end, including prompt corrective steps by the Executing Agency where such circumstances are attributable to it or within its responsibility or control.

3. The UNDP may at any time after occurrence of such circumstances and appropriate consultations in connection therewith suspend the execution of a Project by written notice to the Executing Agency and the recipient Government, without prejudice to the initiation or continuation of any of the measures envisaged in the preceding paragraph. The UNDP may indicate to the Executing Agency and the recipient Government the conditions under which it is prepared to authorize a resumption of execution of the Project concerned.

4. If the cause of suspension is not rectified or eliminated within fourteen days after the UNDP shall have given notice of suspension to the recipient Government and/or the Executing Agency, the UNDP may, by written notice at any time thereafter during the continuation of such cause:

(a) Terminate the Project; or

(b) Terminate the Executing Agency's execution of such Project, and take over its execution or entrust it to another Executing Agency, with effect from the date specified in the written notice from the UNDP.

5. (a) In the event of any termination under the preceding paragraph, the UNDP shall reimburse the Executing Agency for all costs it may incur or may have incurred (and for which provision has been made in the Project Documents) to execute the Project concerned up to the effective date of the termination, including:

- (i) Such proportion of the Executing Agency support costs allowable for the Project (if any) as the amount expended on such Project by the Executing Agency (counted to the effective date of termination) bears to the entire UNDP allocation on the Project (as determined in the Project Documents); and
- (ii) Reasonable costs of winding up its execution of the Project.

Reimbursement to the Executing Agency under this provision, when added to amounts previously remitted to it by the UNDP in respect of a Project, shall not exceed the total UNDP allocation for such Project.

(b) In the event of transfer of the Executing Agency's responsibilities for execution of a Project either to the UNDP or to another Executing Agency, the Executing Agency shall co-operate with the UNDP in the orderly transfer of such responsibilities.

6. In the event of *force majeure* or other similar conditions or events which prevent the successful execution of a Project by the Executing Agency, the Executing Agency shall promptly notify the UNDP of such occurrence and may with the agreement of the UNDP withdraw from execution of the Project. In case of such withdrawal, and unless the Parties agree otherwise, the Executing Agency shall be reimbursed the actual costs incurred up to the effective date of the withdrawal.

Article XIII. WAIVER OF IMMUNITIES

The privileges and immunities accorded to operational experts, consultants, firms, organizations and, in general, all persons performing services under the UNDP Basic Assistance Agreement with Governments, may be waived by the Executing Agency where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the successful completion of the Project concerned or to the interests of the UNDP or the Executing Agency; the Executing Agency shall give sympathetic consideration to the waiver of such immunity in any case in which the UNDP so requests.

Article XIV. SETTLEMENT OF DISPUTES

1. Any relevant matter for which no provision is made in this Agreement, or any controversy between the UNDP and the Executing Agency shall be settled by negotiation between the Parties, within the context of the relevant resolutions and decisions of the UNDP Governing Bodies.

2. In case any matters are not resolved by negotiation, either Party shall have the option to request the appointment of a conciliator or arbitrator by the President of the International Court of Justice. The procedure of the conciliation or arbitration shall be fixed, in consultation with the Parties, by the conciliator or arbitrator. The recommendation of the conciliator or the arbitral award shall contain a statement of the reasons on which it is based. The Parties shall give due consideration to the

recommendation of a conciliator and abide by an arbitral award. The expenses of the conciliation or arbitration shall be borne equally by the Parties.

Article XV. TERMINATION

1. This Agreement may be terminated by either Party by written notice to the other and shall terminate sixty days after receipt of such notice, provided that termination shall become effective with respect to on-going Projects only with the concurrence of both Parties.

2. The provisions of this Agreement shall survive its termination to the extent necessary to permit an orderly settlement of accounts between the UNDP and the Executing Agency and, if appropriate, with each recipient Government concerned.

Article XVI. MODIFICATIONS

This Agreement may be modified by written agreement between the Parties.

Article XVII. ENTRY INTO FORCE

This Agreement shall enter into force upon signature, and shall continue in force until terminated under Article XV above.

IN WITNESS WHEREOF, the undersigned being duly authorized, have signed the present Agreement, in a single copy in the English and French languages, both texts being equally authentic, on the dates and at the places indicated below their respective signatures.

For the United Nations
Development Programme:

[Signed]¹

SIGNED on 17 July 1990 at New York.

For the Universal Postal Union:

[Signed]²

SIGNED on 11 July 1990 at Berne.

¹ Signed by W. Draper.

² Signed by Adwaldo Cardoza B. H. de Barros.

ANNEX

[For the text of the annex, see p. 368 of this volume.]
