



**MEMORANDUM OF AGREEMENT
FOR
MANAGEMENT AND OTHER SUPPORT SERVICES
RELATED TO
THE ECUADOR YASUNI ITT FUND**



Gobierno Nacional de la
República del Ecuador



MEMORANDUM OF AGREEMENT
between
the Government of Ecuador
and
the United Nations Development Programme
for
Management and Other Support Services
Related to the Ecuador Yasuni ITT Trust Fund

WHEREAS, the Government of Ecuador (hereinafter the “Government”) has proposed to indefinitely refrain from extracting the oil reserves in the Ishpingo Tambococha Tiputini (ITT) field, within the Yasuni National Park, in order to put social and environmental values first;

WHEREAS, the Government has conditioned its proposal on the cooperation of the international community through contributing at least half of the revenue that the Government would have received by extracting the oil reserves in the Yasuni ITT field, within the Yasuni National Park;

WHEREAS, in this context, the Government has requested the United Nations Development Programme (UNDP), through its Multi-Donor Trust Fund Office (MDTF Office) to provide management and other support services related to the establishment and management of the ECUADOR YASUNI ITT TRUST FUND (hereinafter “Yasuni Fund”);

WHEREAS, UNDP agrees to provide such management and other support services in connection with the Yasuni Fund, pursuant to its Financial Regulations and Rules, and Yasuni Terms of Reference and on the terms and conditions set out herein;

WHEREAS, the Government has appointed the Ministry of Heritage as the Government Coordinating Entity, on behalf of the Government (hereinafter “Governing Coordinating Entity”), who shall assume full financial and programmatic accountability for the funds disbursed to the Recipient and Implementing Organizations (described below) by the Administrative Agent, and shall have such other responsibilities as set forth herein; and

NOW, THEREFORE, the Parties agree as follows:

Article 1
Establishment of the Yasuni Fund

1. The Yasuni Fund shall commence upon signature of this Memorandum of Agreement



(MOA), and shall be open for receipt of contributions until reaching 407 million metric tons of CO₂ not emitted as a result of preserving the Yasuni ITT oil reserves, pursuant to the governance arrangements of the Yasuni Fund and for the approved activities, as set out in the Terms of Reference of the Yasuni Fund dated July 28, 2010, (hereinafter referred to as the “Yasuni Fund TOR”), incorporated herein by reference and attached hereto as ANNEX 1. The establishment of the Yasuni Fund shall facilitate the effective and efficient collaboration between the Government, Contributors (as defined in the Yasuni Fund TOR), the Administrative Agent, and other stakeholders for the implementation of the Yasuni Fund.

2. To this end, the Yasuni Fund Steering Committee (Steering Committee) will serve as the primary coordination and governance mechanism, as described in the Yasuni Fund TOR. The Steering Committee will carry out the functions ascribed to it in the Yasuni Fund TOR, including final fund allocation decisions and overseeing the effective monitoring and evaluation of Yasuni Fund financed activities. The activities of the Fund shall be carried out on the basis of the applicable national laws, regulations and procedures (hereinafter referred to as the “National Regulatory Framework”), provided they do not contravene the principles set out in UNDP’s regulations and rules.

3. Through the Steering Committee, the Government and UNDP shall consult closely with respect to the management and other support services provided under this Agreement. The Government shall ensure that all necessary support is given by the relevant Ecuadorian authorities to UNDP to facilitate the activities to be carried out under the Yasuni Fund. The Steering Committee will establish its Rules of Procedure, consistent with the Yasuni Fund TOR.

4. The Steering Committee shall be chaired by a representative of the Government of Ecuador. The Steering Committee will have six full members and two ex-officio members. The six full members will comprise of: (i) three representatives of the Government of Ecuador, including the Chair; (ii) two representatives of Contributor Governments; and (iii) one representative of Ecuadorean civil society. The ex-officio members shall be the Resident Representative of UNDP, who also serves as the Resident Coordinator; and the Executive Coordinator of the UNDP MDTF Office, representing UNDP as the Administrative Agent.

5. As reflected in the Yasuni Fund TOR, the Yasuni Fund will have two windows: the Capital Fund Window, established through contributions to the Yasuni Fund Account and the issue or sale of Yasuni Guarantee Certificates (CGYs), and the Revenue Fund Window resourced with mandatory annual revenue payments in respect of the funds disbursed from the Capital Fund Window.

6. Contributions and income from the sale of CGYs channeled through the Capital Fund Window will be used to finance approved project proposals submitted by national institutions



**Gobierno Nacional de la
República del Ecuador**



of Ecuador involved in the renewable energy investment areas identified in the Yasuni Fund TOR (“Recipient Organizations”), and on terms agreed between the Government Coordinating Entity and the Recipient Organizations, as approved by the Steering Committee, as further described below.

7. The Revenue Fund Window of the Yasuni Fund shall be resourced with mandatory annual revenue payments received from Recipient Organizations in respect of the funds disbursed from the Capital Fund Window. The terms of payment of the Recipient Organizations will be approved by the Steering Committee. The Revenue Fund Window will be used to fund development projects within the framework of the strategic sustainable development programmes within the guidelines of the Ecuadorian National Development Plan, described in the Yasuni Fund TOR. The Revenue Fund Window projects will be implemented by national entities in accordance with the National Development Plan, the National Regulatory Framework and the Yasuni Fund TOR (“Implementing Organizations”).

8. Resources from the Yasuni Fund, including interest accrued to the Yasuni Fund Account, will be utilized for the purpose of meeting the direct and indirect costs of projects managed by the Government Coordinating Entity, through the Recipient and Implementing Organizations, as well as meet the direct costs related to the administration of the Yasuni Fund, the Technical Secretariat and required fund-wide evaluations. Details of such projects and/or proposals, including respective budgets and description of the Recipient and Implementing Organizations will be set out in the relevant project documents and/or proposals, approved by the Steering Committee.

Article 2 The Administrative Agent

9. The Government hereby engages UNDP, through its MDTF Office, to administer the Yasuni Fund on its behalf, in accordance with the Yasuni Fund TOR. UNDP shall use its multi-donor trust fund management mechanism adapted for the management support services arrangements described herein.

10. Upon signature of this MOA, UNDP will establish a separate bank account for receipt of contributions for the Yasuni Fund (“Yasuni Fund Account”). UNDP will conclude on behalf of the Government, and as adapted for this Yasuni Fund, the Standard Administrative Arrangement (SAA), annexed hereto as ANNEX 2, for receipt of funds from Contributors, except where the contributions are below the minimum threshold established by the Steering Committee in accordance with its Rules of Procedure, for deposit of funds into the Yasuni Fund Account without the conclusion of the SAA, to be received on the basis of only an acknowledgement of receipt by the Administrative Agent.



11. UNDP as Administrative Agent, through its MDTF Office, will carry out the following functions:

- (a) Receive financial contributions from Contributors and deposit those in the Yasuni Fund Account for transfer to the Capital Fund Window;
- (b) Upon receipt of contributions, notify the Government and request it to issue within 30 days CGYs to Contributors, except for contributions under a minimum threshold established by the Steering Committee in its Rules of Procedure, equivalent to the amount contributed by each Contributor;
- (c) Receive payments into the Yasuni Fund Account for transfer to the Capital Fund Account from the Government's placement and sale of CGYs to private and public entities;
- (d) Administer the funds received, in accordance with UNDP regulations, rules, policies and directives and the Yasuni Fund TOR, including the provisions relating to winding up the Yasuni Fund Account and related matters;
- (e) Subject to availability of funds and following agreements signed between the Government Coordinating Entity and Recipient Organizations, and after instruction from the Government Coordinating Entity, disburse the funds from the Capital Fund Window to each Recipient Organization for the Yasuni Fund projects in accordance with the decisions of the Steering Committee and the instructions of the Government Coordinating Entity, taking into account the budget set out in the approved programmatic document¹, as amended in writing from time to time by the Steering Committee;
- (f) Receive annual revenue payments from the Recipient Organizations in the amount approved by the Steering Committee from the Capital Fund Window for each Recipient Organization, by initially deducting such amount before disbursement to the Recipient Organization and depositing the payments into the Revenue Fund Window, as the revenue payment for the first year, with subsequent payments falling due on the anniversary of the initial disbursement;

¹ As used in this document, an approved programmatic document refers to projects, programmes which are approved by the Steering Committee for fund allocation purposes.



- (g) Subject to availability of funds, and following the agreement signed between the Government Coordinating Entity and the Implementing Organizations carrying out activities financed from the Revenue Fund Window, disburse the funds from the Revenue Fund Window to the Implementing Organizations, in accordance with the decisions of the Steering Committee and the instructions of the Government Coordinating Entity, taking into account the budget set out in the approved programmatic document, as amended in writing from time to time by the Steering Committee;
- (h) Consolidate statements and reports, based on submissions provided to the Administrative Agent by the Government Coordinating Entity, based on the submissions of each Recipient Organization of the Capital Fund Window and each Implementing Organization of the Revenue Fund Window, as set forth below, and provide these to the Steering Committee and Contributors, through the Technical Secretariat;
- (i) As applicable, provide final reporting, including notification that the Yasuni Fund has been operationally completed, in accordance with the Yasuni Fund TOR; and
- (j) Disburse funds to the Government Coordinating Entity for any additional costs of the tasks that the Steering Committee may decide to allocate in accordance with the Yasuni Fund TOR.

12. The Administrative Agent will enter into a Standard Administrative Arrangement, in the form attached hereto as ANNEX 2 (hereinafter referred to as a “Standard Administrative Arrangement”), with each Contributor that wishes to provide financial support to the Yasuni Fund through the Administrative Agent, except as otherwise determined by the Steering Committee in its Rules of Procedure. The Administrative Agent will not agree with the Contributor to amend the terms of ANNEX 2 without prior written agreement of the Government Coordinating Entity. The Administrative Agent and the Government Coordinating Entity will ensure the posting of a copy of the Standard Administrative Arrangement it enters into, as well as information on contributions, on the website of the Administrative Agent (<http://mdtf.undp.org>), as well as the website of the Yasuni Fund (www.yasuni-itt.gov.ec), as appropriate.

13. To cover the cost of the UNDP MDTF Office fund administration services, UNDP will submit an annual estimated cost of services to the Steering Committee, through the Technical Secretariat, in the third quarter of the year, for services to be provided in the following year. The annual estimated costs will be reviewed and approved by the Steering Committee. The



**Gobierno Nacional de la
República del Ecuador**



Government shall make payment to UNDP prior to the commencement of the fund administration services or through the Steering Committee, authorize UNDP to deduct the fee out of the Yasuni Fund Account. The cost of fund administration services for the first year which has been approved by the Government will be paid following signature of this MOA, until such time that the Yasuni Fund Account has sufficient funds to cover the costs, at which time the Government shall be entitled to be reimbursed from the Yasuni Fund Account for the payment to the Administrative Agent, following approval by the Steering Committee.

Article 3 **Financial Matters**

The Administrative Agent

14. The Administrative Agent will establish a separate bank account (hereinafter, the “Yasuni Fund Account”) under its financial regulations and rules for the receipt and administration of the funds received pursuant to a Standard Administrative Arrangement. Such contributions will be credited to the Yasuni Fund Account. The Yasuni Fund Account will be administered by the UNDP MDTF Office, as the Administrative Agent, in accordance with the UNDP applicable regulations, rules, directives and procedures, including those relating to interest. The Yasuni Fund Account will be subject exclusively to the internal and external auditing procedures laid down in the applicable UNDP financial regulations, rules, directives and procedures. In respect of the internal audit, the summary of the findings and recommendations will be promptly communicated to the Steering Committee.

15. The Administrative Agent will not absorb gains or losses on currency exchanges which will increase or decrease the funds available for disbursements to the Government Coordinating Entity, and the Recipient and Implementing Organizations.

16. Subject to the availability of funds, the Administrative Agent will make disbursements from the Yasuni Fund Account based on decisions from the Steering Committee, in line with the budget set forth in the programmatic document, as amended from time to time by the Steering Committee, and following an instruction from the Government Coordinating Entity.

17. The Administrative Agent will normally make each disbursement within three (3) to five (5) business days after receipt of the relevant approved programmatic document, in accordance with the instructions received from the Steering Committee in line with the Yasuni Fund TOR, along with a copy of the relevant approved programmatic document and agreement concluded between the Government Coordinating Entity and the concerned Recipient or Implementing Organization. The Administrative Agent will transfer funds to each Recipient or Implementing Organization, on instruction from the Government Coordinating Entity, through wire transfer.



**Gobierno Nacional de la
República del Ecuador**



The Government Coordinating Entity will advise the Administrative Agent in writing of the bank account for transfers pursuant to this MOA. When making a transfer, the Administrative Agent will notify the Government Coordinating Entity's Treasury Operations, with a copy to the Recipient or Implementing Organization, of the following: (a) the amount transferred, (b) the value date of the transfer; and (c) that the transfer is from the UNDP MDTF Office in respect of the Yasuni Fund pursuant to this MOA.

18. Where the balance in the Yasuni Fund Account on the date of a scheduled disbursement is insufficient to make that disbursement, the Administrative Agent will consult with the Steering Committee and make a disbursement, if any, in accordance with the Steering Committee's instructions.

The Government Coordinating Entity

19. The Government has designated the Ministry of Heritage of Ecuador to serve as the Government Coordinating Entity, through its Yasuni ITT Coordination Office, the primary interlocutor on all aspects of the Yasuni Fund including with respect to the Administrative Agent. The Government Coordinating Entity, and through it the Recipient and Implementing Organizations, assumes full programmatic and financial accountability for the funds disbursed to them by the Administrative Agent.

20. In order to carry out activities under the Yasuni Fund, Recipient Organizations under the Capital Fund Window and Implementing Organizations under the Revenue Fund Window shall be proposed by the Government Coordinating Entity and approved by the Steering Committee, following assessments of financial, managerial and technical capacity by the Technical Secretariat. The Steering Committee shall also review and approve the proposals recommended for funding. It is understood that such Organizations will disburse funds and carry out activities on the basis of the applicable National Development Plan and the National Regulatory Framework.

21. The Government Coordinating Entity will establish, and have each Recipient and Implementing Organization establish, a separate ledger account under its financial regulations and rules for the receipt and administration of the funds disbursed to it by the Administrative Agent from the two windows of the Yasuni Fund Account. That separate ledger account will be administered by the Government Coordinating Entity, and Recipient and Implementing Organizations in accordance with the National Regulatory Framework.

22. The Government Coordinating Entity will use, and have the Recipient and Implementing Organizations use, the funds disbursed to it by the Administrative Agent from the Yasuni Fund Account to carry out the activities for which it is responsible as set out in the approved



programmatic document. The Government Coordinating Entity, and through it the Recipient and Implementing Organizations, will commence and continue to conduct operations for the programmatic activities only upon receipt of disbursements as instructed by the Steering Committee. The Government Coordinating Entity, and through it the Recipient and Implementing Organizations, will not make any commitments above the approved budget in the approved programmatic document, as amended from time to time by the Steering Committee. If there is a need to exceed the budgeted amount, the Government Coordinating Entity concerned will submit a supplementary budget request to the Steering Committee.

Article 4

Activities of the Government Coordinating Entity

23. Before the Administrative Agent will disburse funds to either a Recipient or Implementing Organization, the Government Coordinating Entity will conclude agreements with each Recipient and Implementing Organization setting out the terms and conditions regarding receipt of funds from the Yasuni Fund, consistent with this MOA and the Yasuni Fund TOR. The Government Coordinating Entity will ensure that each Recipient and Implementing Organization is responsible for the activities carried out by it, in accordance with the decisions of the Steering Committee, and the National Regulatory Framework.

24. After approval of the Steering Committee of the respective Recipient or Implementing Organization proposal, the Government Coordinating Entity will instruct the Administrative Agent to disburse the approved amount to the respective Organization. In connection with disbursements to the Recipient Organizations, pursuant to the Yasuni Fund TOR, and as shall be reflected in the agreements signed between the Government Coordinating Entity and each Recipient Organization, each disbursement shall be subject to an annual revenue payment in the amount and on the terms approved by the Steering Committee. The Administrative Agent will deduct the initial payment before disbursement to the Recipient Organization and deposit it into the Revenue Fund Window, as the revenue payment for the first year, with subsequent payments falling due on the anniversary of the first disbursement.

25. The Government Coordinating Entity through the Yasuni Fund Steering Committee will take the necessary steps to ensure that Recipient Organizations have the required capacities to accomplish their commitments in accordance the National Regulatory Framework, including their payments to the Revenue Fund Window.

26. Any modifications to scope of the approved programmatic document, including as to their nature, content, sequencing or the duration thereof will be subject to mutual agreement in writing between the Government Coordinating Entity, the relevant Recipient or Implementing Organization and the Steering Committee. The Government Coordinating Entity



**Gobierno Nacional de la
República del Ecuador**



will promptly notify the Administrative Agent of any change in the budget approved by the Steering Committee, as set out in the programmatic document of any Recipient or Implementing Organization. On the termination of this MOA, the ownership of equipment, supplies and other property financed from the Yasuni Fund shall vest in the Government.

27. The Government Coordinating Entity will ensure that where a Recipient or Implementing Organization wishes to carry out its activities through or in collaboration with a third party, it will be responsible for discharging all commitments and obligations with such third parties, and the Administrative Agent will not be responsible for doing so.

28. In carrying out their activities, neither the Government Coordinating Entity, nor the Recipient nor Implementing Organization will be considered as an agent of the Administrative Agent, nor will the personnel of one be considered as staff members, personnel or agents of the Administrative Agent. Without restricting the generality of the preceding sentence, the Administrative Agent will not be liable for the acts or omissions of the Government Coordinating Entity, the Recipient or Implementing Organizations, or their personnel, or of persons performing services on their behalf.

29. The Government Coordinating Entity will advise the Administrative Agent in writing when all activities for which the Recipient and Implementing Organization are responsible under the approved programmatic document have been completed.

30. The Government Coordinating Entity recognizes that the Contributors reserve the right to discontinue future contributions if reporting obligations are not met as set forth in the Standard Administrative Arrangement, or if there is proven improper use of funds determined by the Steering Committee. If it is agreed by the Steering Committee that there is evidence of improper use of funds, the Government Coordinating Entity will use its best efforts, through the appropriate government body, consistent with its regulations, rules, policies and procedures to recover any funds misused. The Government Coordinating Entity will through the Steering Committee credit any funds so recovered to the Yasuni Fund Account or agree with the Steering Committee to use these funds for a purpose mutually agreed upon. Before withholding future contributions or requesting recovery of funds and credit to the Yasuni Fund Account, the Administrative Agent, the Government Coordinating Entity and the Contributor will consult with a view to promptly resolving the matter.

31. In the event that the Government defaults on its commitment and decides to initiate oil prospecting in the Yasuni ITT oil fields, the CGYs will entitle the holders to be reimbursed by the Government the equivalent to the face value of the CGYs in US



dollars², in such form as shall be agreed between the Government and the Contributor. In that event, the uncommitted balance of the Capital Fund Window shall be used by the Government towards the reimbursement to the Contributors of the face value of the CGYs. To this end, the uncommitted balance of the Capital Fund Window, if any, shall be returned to the Contributors in the proportion of their contribution. Once the Government notifies the Steering Committee and the Administrative Agent of its decision to initiate oil prospecting in the Yasuni ITT oil fields, the Yasuni Fund accounts will thereafter be wound up so as to permit the orderly closure of the Yasuni Fund, including settlement of claims on issued CGYs.

32. The Government Coordinating Entity recognizes that it is important to take all necessary precautions to avoid inappropriate practices. To this end, the Government Coordinating Entity will guarantee the application of the National Regulatory Framework for the use of public funds. In the event that the Government Coordinating Entity determines that an allegation in relation to the implementation of activities – including corrupt, fraudulent, collusive or coercive practices that may have taken place - is credible enough to warrant an investigation, it will promptly notify the Steering Committee and the Administrative Agent and the appropriate Ecuadorian regulatory and control bodies, to the extent that such notification does not jeopardize the conduct of the investigation. The allegation will be dealt with by the appropriate government's entity in charge of such investigations. Upon completion of the investigation, the Government Coordinating Entity will inform the Steering Committee and the Administrative Agent about the results of the investigation which will handle in accordance with the National Regulatory Framework.

Article 5 **Reporting**

33. The Government Coordinating Entity, and through it the Recipient and Implementing Organizations, will provide the Administrative Agent with the following statements and reports, as set forth in the Yasuni Fund TOR.

- (a) Annual narrative progress reports, to be provided no later than three months (31 March) after the end of the calendar year;

² If the contribution is received in currency other than US dollars, in the event repayments have to be made by the Government of Ecuador to the contributors, the repayments will be made applying the original United Nations operational rate of exchange used by the Administrative Agent to record the contribution.



- (b) Annual financial statements and reports as of 31 December with respect to the funds disbursed to it from the Yasuni Fund Account, to be provided no later than four months (30 April) 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 Yasuni Fund. The final report will give a summary of results and achievements compared to the goals and objectives of the Yasuni Fund;
- (d) Mid-year progress updates that will allow the Government and the Steering Committee to assess project implementation progress on an on-going basis; and
- (e) Certified final financial statements and final financial reports after the completion of the activities in the approved programmatic document and including the final year of the activities in the approved programmatic document, to be provided no later than six months (30 June) of the year following the financial closing of the Yasuni Fund.

34. The Administrative Agent 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 Contributor to the Yasuni Fund Account, as well as the Steering Committee, in accordance with the timetable established in the Administrative Arrangement.

35. The Administrative Agent will also provide the Contributors, Steering Committee and the Government Coordinating Entity with the following statements on its activities as Administrative Agent:

- (a) Certified annual financial statement (“Source and Use of Funds”) to be provided no later than five months (31 May) after the end of the calendar year; and
- (b) As applicable, 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 Yasuni Fund.

36. Consolidated reports and related documents will be posted on the websites of the Yasuni Fund (www.yasuni-itt.gov.ec) and the Administrative Agent (<http://mdtf.undp.org>).



Article 6 **Monitoring and Evaluation**

37. Monitoring and evaluation of the Yasuni Fund including, as necessary and appropriate, joint evaluation by the Contributor, the Government, the Government Coordinating Entity, the Administrative Agent, and other partners, will be undertaken in accordance with the provisions contained in the Yasuni Fund TOR.

38. The Contributors, the Government, the Government Coordinating Entity, together with the Recipient and Implementing Organizations, and the Administrative Agent, through the Steering Committee, will hold annual consultations, as appropriate, to review the status of the Yasuni Fund.

Article 7 **Audit**

39. The Government Coordinating Entity, and through it the Recipient and Implementing Organizations, will be audited in accordance with the national audit framework. The Administrative Agent will be audited in accordance with its own Financial Regulations and Rules.

Article 8 **Joint Communication**

40. The Government Coordinating Entity will take appropriate measures to publicize the Yasuni Fund and to give due credit to the other stakeholders. Information given to the press, to the beneficiaries of the Yasuni Fund, all related publicity material, official notices, reports and publications, will acknowledge the leading role of the Government, the Contributors, the Government Coordinating Entity, the Administrative Agent and any other relevant entities. In particular, the Administrative Agent will include and ensure due recognition of the role of the Government, the Government Coordinating Entity and national partners in all external communications relating to the Yasuni Fund.

41. The Administrative Agent in consultation with the Government Coordinating Entity 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, where appropriate, for public information on the websites of the Yasuni Fund (www.yasuni-itt.gov.ec) and the Administrative Agent (<http://mdtf.undp.org>). Such reports and documents may include Steering Committee approved programmes and programmes awaiting approval, fund level annual financial and progress reports and external evaluations, as appropriate.



Article 9
Entry into Force, Expiration, Modification

42. This MOA will come into effect upon signature by authorized representatives of the Parties and will continue in full force and effect until it is terminated.

43. The Yasuni Fund has an undetermined termination date since the Fund will continue generating revenue payments over the years. However, UNDP's role as the Yasuni Fund Administrative Agent shall be limited to such time that there is no future contribution to the Yasuni Fund, as detailed in the TOR or a successor is selected by the Steering Committee in consultation with the Contributors.

44. This MOA will expire upon winding up of the Yasuni Fund, or upon its termination by the Government upon selection of a successor to UNDP in accordance with paragraph 43 above, subject to the continuance in force of paragraph 47 below for the purposes therein stated. In addition, the MOA may be terminated upon 180 days notice, upon mutual agreement of the Parties, subject to the continuance in force of paragraph 47 below for the purposes therein stated.

45. This MOA may be modified only by written agreement between the Parties.

46. Commitments assumed by the Parties under this MOA will survive the expiration or termination of this MOA 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 Parties hereto and the settlement of contractual liabilities that are required in respect of any subcontractors, consultants or suppliers. Any balance remaining in the Yasuni Fund Account or in the Government Coordinating Entity and individual Recipient and Implementing Organization's separate ledger accounts upon winding up of the Yasuni Fund will be used for a purpose as decided by the Steering Committee or returned to the Government.

Article 10
Notices

47. Any action required or permitted to be taken under this MOA may be taken on behalf of the Administrative Agent, by the Executive Coordinator of the UNDP MDTF Office, or his designated representative, and on behalf of the Government, by the Minister of Heritage, or her designated representative.



Gobierno Nacional de la
República del Ecuador



48. Any notice or request required or permitted to be given or made in this MOA will be in writing. Such notice or request will be deemed to be duly given or made when it will have been delivered by hand, mail or any other agreed means of communication to the party to which it is required to be given or made, at such party's address specified below or at such other address as the party will have specified in writing to the party giving such notice or making such request.

For the Government:

Name: Maria Fernanda Espinosa
Title: Minister of Natural and Cultural Heritage
Address: Coordinator Ministry of Natural and Cultural Heritage
Telephone: (5932)2993204
Facsimile:
Electronic mail: mfespinosa@ministeriopatrimonio.gov.ec

For the Administrative Agent:

Name: Bisrat Aklilu
Title: Executive Coordinator, MDTF Office, UNDP
Address: 828 Second Avenue, New York, NY 10017, USA
Telephone: +1 212 906 6880
Facsimile: +1 212 906 6990
Electronic mail: bisrat.aklilu@undp.org

Article 11
General Provisions

49. In the event of any controversy, claim or dispute between the Parties arising out of this MOA or the breach thereof, the Parties shall first seek an amicable resolution thereof through good faith direct negotiations.

50. In the event that the controversy, claim or dispute is not resolved amicably by direct negotiations between the Parties three months after one party has notified the other party of such dispute, controversy or claim, either party may initiate arbitration. Each Party shall appoint one arbitrator, and the two arbitrators so appointed should appoint a third, who shall be the chairman. If within thirty days of the request for arbitration, either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the



Gobierno Nacional de la
República del Ecuador



arbitrators and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral proceedings will take place in Quito, Ecuador, unless the Parties and/or the arbitrators agree that another place, such as New York, USA, is more appropriate, depending on the nature of the dispute, controversy or claim. The language of the proceedings shall be Spanish. Simultaneous interpretation of the proceedings and the translation of all documents and the proceedings shall also be available in English, as necessary. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

51. The Government agrees that the provisions of the Agreement between UNDP and the Government, published in the Official Ecuadorian Gazette on 17 February 2005, relating to UNDP’s assistance to the country (SBAA) shall apply to UNDP and its personnel carrying out the management and other support services provided hereunder, except that the funds contributed to the Capital and Revenue Fund Windows of the Yasuni Fund Account shall be deemed resources of the Government.

52. In accordance with the SBAA, the Government shall bear all risks of operations arising under this Agreement and shall be responsible for dealing with claims which may be brought by third parties against UNDP, its officials or other persons performing services on its behalf, and shall hold them and UNDP harmless in respect of claims or liabilities arising from operations under this Agreement. The foregoing provision shall not apply where the Government and UNDP agree that claims or liabilities arise from the gross negligence or willful misconduct of the above-mentioned persons.

IN WITNESS WHEREOF, the undersigned, duly authorized representatives of the respective Parties, have signed this MOA in the English and Spanish language, each text being equally authentic, in two copies.

On behalf of the Government of Ecuador:

On behalf of UNDP:

Econ. Ricardo Patiño
MINISTER OF FOREIGN AFFAIRS
REPUBLIC OF ECUADOR

Rebeca Grynspan
UNDER-SECRETARY GENERAL
OF THE UNITED NATIONS
ASSOCIATE ADMINISTRATOR OF THE UNDP

3 August 2010
Date

3 August 2010
Date

signed
Signature

signed
Signature



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As witness of honor:

Maria Fernanda Espinosa
MINISTER OF NATURAL AND CULTURAL HERITAGE

3 August 2010
Date

signed
Signature

As witness of honor:

Lic. Lenín Moreno
CONSTITUTIONAL VICE-PRESIDENT OF ECUADOR

3 August 2010
Date

signed
Signature

ANNEX 1 – Yasuni Fund TOR
ANNEX 2 – SAA