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EXECUTIVE COMMITTEE OF
THE MULTILATERAL FUND FOR THE
IMPLEMENTATION OF THE MONTREAL PROTOCOL
Forty-second Meeting
Montreal, 29 March - 2 April 2004

**NEW DRAFT AGREEMENT BETWEEN UNEP AND THE EXECUTIVE
COMMITTEE**

Follow up to Decision 41/3 (b)

1. The Executive Committee decided in Decision 41/3(b) to negotiate a new agreement with UNEP for its services as Treasurer.
2. As a follow up to Decision 41/3(b), the Secretariat submitted to UNEP a revised draft agreement which incorporates Executive Committee decision 41/4 (c) and (e) below:
 - c) *That the new agreement should stipulate that the annual fee of the Treasurer would remain in effect unchanged for a period of five years as of the date of the agreement;*
 - e) *To request UNEP to substantiate its request for an annual fee of US \$500,000, including clarification of its need for additional support staff, and to seek further savings in this area.*

3. The revised new draft agreement also took into account some of the comments made by UNEP on an earlier draft.
4. In a memorandum of 19 February 2004 from Dr. Töpfer to the Secretariat (attached as Annex 2), UNEP provided its comments and proposed clauses for inclusion in the final draft agreement.
5. By memorandum dated 19 March 2004 (attached as Annex 3), UNON provided additional comments, particularly in respect to clause 1.4 requiring UNEP to seek contributions from other donors, and provided further justifications to substantiate its request for the annual fee of USD 500,000. It reiterated the fact that the sum of US \$500,000 per annum, fixed for 5 years, is inclusive of inflation which UNEP estimated at 5 per cent per annum. UNEP indicated that the proposed fee also takes into account increased costs associated with additional staff required to accomplish the complex tasks requested as part of the treasury function.
6. A final draft agreement, which takes into account the Executive Committee's decisions and UNEP's final comments and suggested amendments as contained in memoranda to the Secretariat of 19 February 2004 and 19 March 2004, is attached as Annex 1.
7. The highlighted clauses in Annex 1 indicate UNEP suggested amendments to the earlier draft version submitted by the Secretariat to UNEP and which was annexed to document UNEP/OzL.Pro/Excom/41/4.

RECOMMENDATION

8. The Executive Committee may wish to consider the final draft agreement as at 19 March 2004 between UNEP and the Executive Committee.

Annex I

FINAL DRAFT (19 March 2004)

AGREEMENT BETWEEN UNEP AS TREASURER OF THE MULTILATERAL FUND FOR THE IMPLEMENTATION OF THE MONTREAL PROTOCOL AND THE EXECUTIVE COMMITTEE OF THE MULTILATERAL FUND ESTABLISHED BY THE PARTIES TO THE MONTREAL PROTOCOL

WHEREAS the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer ("Protocol") to the Vienna Convention for the Protection of the Ozone Layer ("Parties") have established the Multilateral Fund for the Implementation of the Montreal Protocol ("Fund") to operate under the authority of the Parties through an Executive Committee to provide the financing of agreed incremental costs to enable Parties operating under paragraph 1 of Article 5 of the Protocol to comply with the control measures of the Protocol;

WHEREAS at the request of the Parties, the Fund was established in accordance with the Financial Regulations and Rules of the United Nations and the Executive Committee entrusted the Executive Director of UNEP with its administration;

WHEREAS the Parties have designated the United Nations Development Programme ("UNDP"), the World Bank ("Bank"), the United Nations Environment Programme ("UNEP") and The United Nations Industrial Development Organisation (UNIDO) as implementing agencies for the work programme of the Fund;

WHEREAS by decision of the Executive Committee, UNEP in addition to being designated as an implementing agency, acted since 1991 as "Treasurer" of the Fund free of charge; with the responsibility of disbursing funds for activities to each of the implementing agencies including itself under the guidance of the Executive Committee;

NOW THEREFORE, the Executive Committee and UNEP hereby agree as follows:

Article I

1.1 UNEP in its capacity as Treasurer will administer the Fund in accordance with the Financial Regulations and Rules of the United Nations.

1.2 UNEP in its capacity as Treasurer will at the beginning of each calendar year, inform all Parties not operating under paragraph 1 of Article V of the Protocol of their contributions due to the Fund and request remittance of Parties contributions. In this regard, UNEP will apply the fixed exchange rate mechanism approved by Decision XIV/40 of the Fourteenth Meeting of the Parties to the Montreal Protocol, or in future amendments to this decision to those Parties who qualify to use the mechanism.

1.3 UNEP in its capacity as Treasurer will acknowledge receipt of contributions from Parties and shall, from time to time, issue reminders to Parties whose contributions are outstanding.

1.4 UNEP in its capacity as Treasurer will seek contributions from other Parties **if requested by the Executive Committee or the Meeting of the Parties.**

1.5 UNEP will collect and maintain an accurate accounting of pledges and contributions from donors including bilateral contributions.

1.6 UNEP in its capacity as Treasurer will maintain an accurate account of funds approved by the Executive Committee as bilateral cooperation assistance and offset these funds against the concerned Party's contribution to the Fund.

1.7 UNEP in its capacity as Treasurer will place contributions paid by Parties in a bank account it will establish for the purpose of receiving such contributions.

1.8 ~~[xxx] will design and manage an investment strategy which takes into account the funding and disbursement patterns of the Multilateral Fund and maximize return on cash balances while meeting disbursement requirements.~~ UNEP will provide, when requested, information on the rate of return on the investment of the Multilateral Fund trust funds held by UNEP.

1.9 ~~[xxx] will design and manage a transparent system for issuance and encashment of promissory notes which maximises benefits to the Multilateral Fund and the issuing Party.~~ UNEP will design and manage a transparent system for issuance and encashment of promissory notes in accordance with predetermined schedules or as funds are needed by implementing agencies.

1.10 UNEP in its capacity as Treasurer will not be responsible for unpaid contributions by Parties.

1.11 The accounts of the Fund will be maintained in United States dollars.

Article II

2.1 **UNEP in its capacity as Treasurer will design and maintain a financial reporting system for transfers, disbursements, interest and expenditures (consistent with Executive Committee decision) that will ensure that the Secretariat databases and Implementing agencies' accounts are reported in a transparent and consistent manner and in agreement with the Treasurer's records to allow uniformity when tracking funds flow and facilitate comparability and reconciliation.**¹

2.2 UNEP in its capacity as Treasurer will remit to the implementing agencies funds approved for them by the Executive Committee, and maintain a payment system to these agencies.

2.3 Funds remitted to the implementing agencies will be disbursed by them in accordance with their respective financial regulations and rules.

2.4 UNEP in its capacity as Treasurer will remit to the United Nations Environment Programme the funds approved for the budget of the Fund Secretariat.

2.5 UNEP in its capacity as Treasurer will not be obligated to remit funds over and above those available in the Fund account.

Article III

3.1 **The Executive Committee agrees to remunerate UNEP in its capacity as Treasurer [US\$ 500,000] annually for services it will provide pursuant to this Agreement, taking into account the functions described in Appendix I of this Agreement. This sum will remain unchanged for a period of 5 years as of the date of entry into force of this agreement.**

Article IV

4.1 UNEP as Treasurer will submit accounts of the Fund to the Executive Committee for each calendar year based upon the expenditures incurred by the Fund Secretariat, the statements of expenditure submitted by the implementing agencies taking into account interest earned by them on Fund balances they have held as well as interest earned by UNEP on balances it holds as Treasurer of the Fund. In addition, UNEP will prepare clear reports on the status of the Multilateral Fund to be submitted through the Fund Secretariat to the meetings of the Executive Committee.

¹ Clause 2.1 replaces clauses 2.1, 2.6 and 4.3 in the former draft agreement which read:

2.1 [xxx] in its capacity as Treasurer will enter into agreement with each implementing agency regarding the administration of funds remitted to them from the Fund. These agreements shall be consistent with the agreements between the Executive Committee and the implementing agencies.

2.6 [xxx] as Treasurer will ensure that the Secretariat and the implementing agencies employ a uniform and transparent methodology when tracking the flow of funds in their accounts and data bases to permit comparability and facilitate annual reconciliation

4.3 [xxx] will design and maintain a reporting system with Implementing Agencies to ensure transparency and accountability of funds transfers, reimbursement and interest payment

4.2 UNEP in its capacity as Treasurer will undertake preparation of studies requested by the Executive Committee and / or by Meetings of the Parties to the Montreal Protocol, as relevant. **UNEP will draw to the attention of the Executive Committee any circumstances where the costs of such studies would exceed the resources available.**

4.3 UNEP will provide direct support to the Executive Committee and its **subsidiary bodies** as necessary, including participation in **Executive Committee** meetings.

4.4 The accounts of the Fund will be subject solely to the Internal and External Audit of the United Nations. Should there be any comments made by the Auditors relating to the accounts, UNEP in its capacity as Treasurer will advise the Chief Officer of the Fund Secretariat and the Chairman of the Executive Committee immediately.

Article V

5.1 Any dispute, controversy or claims arising out of, or in connection with, this Agreement, will, unless it is settled by direct negotiation, be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The Executive Committee and UNEP agree to be bound by any arbitration award rendered in accordance with this section as the final adjudication of any dispute.

Article VI

6.1 This agreement shall enter into force upon signature by both parties.

6.2 This agreement shall remain in force until such time as both parties agree to terminate it. Should one party wish to terminate the agreement, such termination notice shall be given 90 days prior to its intended termination.

6.3 Any amendment to this agreement shall require the concurrence in writing of both parties.

6.4 In case of conflict between the terms and conditions of this agreement and the Financial Regulations of the United Nations, the latter will prevail.

for UNEP

for the Executive Committee

Appendix I

Functions of Treasurership to the Multilateral Fund

1. Multilateral Fund trust fund:

- 1.1. establishment and management of a trust fund for the management of the Multilateral Fund resources and financial reports;
- 1.2. calculation of the triennial and yearly pledges by each Party (some 42 Parties) in accordance with the terms of reference approved by the Parties to the Montreal Protocol in US dollars and national currencies as applicable;
- 1.3. keeping updated tools for the calculation of the distribution of pledges to the Parties to the Montreal Protocol in accordance with the UN scale of assessment;
- 1.4. calling for and sending reminders to the Parties for contribution payments, receiving the contributions, acknowledging the receipts and managing the bank account and the appropriate accounting for the transactions; and
- 1.5. making remittances to the implementing agencies² in accordance with the approvals of the Executive Committee of the Multilateral Fund.

2. Multilateral Fund Bank Account(s):

- 2.1. establishment of a bank account for receiving contributions by Parties and others and effecting transfers and payments in accordance with the approvals of the Executive Committee;
- 2.2. management of the resources in the bank account with the view of maximizing the returns on any surplus funds not immediately needed; and
- 2.3. management of any other subsidiary (bank) accounts which are opened for the smooth operations of the Fund like for the management of promissory notes and their subsequent encashments.

3. Bilateral Cooperation Assistance

- 3.1. maintaining an accurate report on the bilateral cooperation assistance (up to 20 % of a party's assessed contribution per annum) approved to Parties by the Executive Committee for their direct implementation;
- 3.2. adjustment of pledges of Parties to account for bilateral cooperation assistance approved by the Executive Committee; and
- 3.3. introduction of the bilateral cooperation assistance's adjustments as reported in the annual progress reports on their implementation.

² Currently the agencies are: UNDP, UNEP, UNIDO, and the World Bank

4. Fixed Exchange Rate Mechanism:

- 4.1. monitoring and recording of the countries inflationary parameters needed in the application of the fixed exchange rate mechanism in determining the Parties who qualify to using the mechanism and secondly fixing the national currencies rates;
- 4.2. monitoring and recording of the various currencies exchange rates needed in the calculation of the fixed exchange rates for use in calculating the national currency pledges by the Parties who qualify to use the mechanism;
- 4.3. requesting the Parties qualifying to use the fixed exchange rate mechanism for their confirmation of their decision to either make their payments to the Fund in national currencies or in United States dollars;
- 4.4. monitoring and recording of the performance of the fixed exchange rate mechanism by each Party using the mechanism with the view of updating the shortfall or gain realized by the mechanism in totality;
- 4.5. monitoring and recording of the value of the promissory notes established within the fixed exchange rate mechanism with the view of having the current value at any time of the reporting on the status of the Fund;
- 4.6. monitoring and recording of the net gain or loss due to the implementation of the fixed exchange rate mechanism in order to properly factor into the calculation of the net funds available for programming in the report of the status of the Fund; and
- 4.7. preparing any reports on the implementation of the fixed exchange rate mechanism as the Executive Committee or the Meeting of the Parties to the Montreal Protocol may require from time to time.

5. Multilateral Fund Reports on the Status of the Fund:

- 5.1. monitoring and recording of the yearly payments in the various forms (cash, promissory notes, bilateral cooperation assistance, and promissory notes encashments) by Parties to the Fund from inception to date for inclusion in the reports on the status of the Fund;
- 5.2. monitoring and recording of the other income elements like interest and miscellaneous income (at the levels of the Treasurer and the implementing agencies) from inception to date for inclusion in the reports on the status of the Fund;
- 5.3. monitoring and recording of cash transfers and promissory notes transfers to implementing agencies or reservation of promissory notes for implementing agencies and any subsequent promissory notes encashments following approvals by the Executive Committee from inception to date for inclusion in the reports on the status of the Fund;
- 5.4. monitoring and recording of commitments and expenditures of the Multilateral Fund Secretariat following approvals of the Executive Committee from inception to date for inclusion in the reports on the status of the Fund; and
- 5.5. preparing the aggregate report on the status of the Fund for the Executive Committee's meetings giving the pertinent information on all elements of income and expenditures/disbursements/commitments and the balance available for new approvals.

6. Multilateral Fund Financial Reports:

- 6.1. preparation of the cumulative financial reports including the statement of income and expenditure; and the report on changes in reserve and fund balance and cumulative fund balance;
- 6.2. preparation of the annual financial reports including the statements of income and expenditure; and the report on changes in reserve and fund balance and cumulative fund balance;
- 6.3. preparation of the implementing agencies summarized/aggregated expenditures reports annually and cumulatively; and
- 6.4. preparation of the Multilateral Fund Secretariat's reports on the annual expenditures vis-à-vis the approvals by the Executive Committee.

7. Reconciliation of Treasurer's Accounts with Implementing Agencies and the Multilateral Fund Secretariat:

- 7.1. reconciliation of approvals by the Executive Committee taking into account funds returned from completed projects, cancelled projects and adjustments to approvals including projects transferred from one Implementing Agency to another;
- 7.2. reconciliation of cash resources transferred by the Treasurer and received by the Implementing Agencies;
- 7.3. reconciliation of promissory notes transferred to the World Bank considering the actual amounts realized in encashments;
- 7.4. reconciliation of reported interest income earned by Implementing Agencies and approvals granted by the Executive Committee to the agencies; and
- 7.5. reconciliation of adjustments to the bilateral cooperation assistance to Parties as per annual implementation progress reports made to the Executive Committee through the Multilateral Fund Secretariat and approvals granted by the Executive Committee.

For reasons of economy, this document is printed in a limited number. Delegates are kindly requested to bring their copies to the meeting and not to request additional copies.

ANNEX II



UNEP

United Nations Environment Programme

برنامج الأمم المتحدة للبيئة • 联合国环境规划署
 PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT • PROGRAMA DE LAS NACIONES UNIDAS PARA EL MEDIO AMBIENTE
 ПРОГРАММА ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ПО ОКРУЖАЮЩЕЙ СРЕДЕ

MEMORANDUM

To: Mrs. Maria Nolan
 Chief Officer
 Multilateral Fund Secretariat

From: Dr. Klaus Töpfer
 Executive Director
 UNEP

Date: 19 February 2004

Subject: Treasury Services – Revised New Draft Agreement between UNEP and Executive Committee Multilateral Fund

This communication refers to the memoranda from Mr. A. Hetherington to me dated 24 January 2004 and 30 January 2004 respectively. It also takes into account ExCom Decisions 41/3/4 and my memorandum of 26 October 2003 and is a follow-up to Mr. Barabanov's memo of 11 February 2004 to you.

UNEP has reviewed the draft agreement for treasury services between UNEP and the Executive Committee and submits its comments for inclusion in the final draft. We believe that the "Treasurer" is a misnomer for the role described in the agreement. The numerous specialized functions performed by the treasurer, and ad hoc studies often requested by ExCom would require a complete unit to adequately meet these demands. The Treasurer often has to outsource to various areas of UNON who administers UNEP for the services provided to ExCom. It is therefore important that the agreement is clear and there are no ambiguous areas which could result in neglected or contested tasks. We have come closer together in many areas and only a few items below remain to be agreed upon.

Article I

1.4 UNEP in its capacity as Treasurer will seek contributions from other Parties.

We agree that when the Multilateral Fund was new and not clear on the way forward, UNEP could help in many ways. Now, however, contributions are voluntary assessed at the Meeting of the Parties for article 2 countries and are based on UN scale of assessment according to the Montreal Protocol Treaty which determines who can be party to article 2 countries. UNEP has never fundraised for Multilateral Fund before and if the treasurer is to seek contributions, please specify what the 'other parties' from whom contributions should be sought.

1.9 UNEP will design and manage a transparent system for issuance and encashment of promissory notes which maximises benefits to the Multilateral Fund and the issuing Party.

The World Bank encashes promissory notes according to its own schedules and policies, member countries set encashment schedules according to their own internal decisions, and the remaining promissory notes are encashed by UNEP as the funds are needed without regard to the market's performance. UNEP does not therefore have the capability to maximize benefits to Multilateral Fund nor to issuing parties.



United Nations Environment Programme

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UNEP therefore suggests the following text:

UNEP will develop a reporting system for tracking promissory notes' issuance and encashments in accordance with pre-determined schedules or as fund are needed by implementing agencies.

Article II

2.1, 2.6 and 4.3 *UNEP proposes that paragraphs 2.1, 2.6 and 4.3 be combined since they all deal with designing and maintaining systems.*

Suggested text:

Design and maintain a financial reporting system for transfers, disbursements, interest and expenditures (consistent with ExCom decision) that will ensure that the Secretariat databases and Implementing agencies' accounts are reported in a transparent and consistent manner and in agreement with the Treasurer's records. This will allow uniformity when tracking funds flow to facilitate comparability and reconciliation.

Article III

3.1 *The amount of US\$ 500,000 per annum will remain in effect unchanged for a period of 5 years as of the date of this agreement in line with ExCom decision 41/3(c).*

UNEP believes that the amount of US\$ 500,000 per annum is well justified taking into account the following:

- a) *The amount remains unchanged for a period of five years with an average inflation rate of 5 percent per year;*
- b) *Expanded complexity of the job of the Treasurer which would require either an additional professional post or recruitment of consultants;*
- c) *Comparing the bids of all organizations which offered to perform the treasurership, UNEP proposed the lowest level of staff requirements; and*
- d) *There are many other small built-in costs to UNON that cannot be clearly quantified in this budget.*


CC: Mr. S. Kakakhel
Mr. M. Gonzalez
Mr. A. Barabanov
Ms. G. Merckx
Mr. S. Kurdjukov
Ms. J. Kazina

Annex III

United Nations  Nations Unies
INTEROFFICE MEMORANDUM M É M O R A N D U M I N T É R I E U R
UNITED NATIONS OFFICE AT NAIROBI

TO: Ms. Maria Nolan
A: Chief Officer
Multilateral Fund Secretariat

DATE: 19 March 2004

FROM: A. Barabano 
DE: Chief
Division of Administrative Services

SUBJECT: **Substantiation and Amendments of Treasury Fees and Draft Agreement**
OBJET: **Substantiation and Amendments of Treasury Fees and Draft Agreement**

1. Further to our discussion I am pleased to confirm that Article 1. Para 1.4 of the draft Agreement changed to read, *UNEP in its capacity as Treasurer will upon request from the ExCom seek contributions from other Parties.*
2. With regard to the ExCom's request to UNEP to substantiate its proposal for an annual fee of US\$500,000, including clarification of its need for additional support staff, and to seek further savings in this area, please find attached an Annex which provides the breakdown of the UNEP's projected annual cost of providing Treasury Service to the Multilateral Fund.
3. I would like to draw your attention to the fact that although the new draft Agreement seems to reconfirm many provisions of the current Agreement there are areas which would require either reinforcement of the current practices or development and implementation of new systems and mechanisms. Among those we would like to emphasize:
 - design and management of transparent system of issuance and encashment of promissory notes;
 - design and maintenance of a financial reporting system for transfers, disbursements, interest and expenditures that will ensure that the secretariat databases and implementing agencies' accounts are reported in a transparent and consistent manner and in agreement with the Treasurer's records to allow uniformity with tracking records flow and facilitate comparability and reconciliation;
 - undertaking preparation of studies requested by the Executive Committee;
 - adjustment of pledges of Parties to account for bilateral cooperation assistance and introduction of the bilateral cooperation assistance's adjustments as reported in the annual progress reports;
 - monitoring of Fixed Exchange Rate mechanism.

UNEP is of the opinion that efficient provision of these services especially conducting the studies requested by the Executive Committee is not possible without creation of another professional position. Taking into account the level of the professional positions in the Multilateral Fund Secretariat, it is proposed that the Treasurer post should be at P-5 level and the Fund Programme Management officer at P-4 level. The division of responsibilities of these two posts is provided in the Annex.

- b) In compliance with the request of the Executive Committee to seek further savings in providing services of the Treasurer, the Service has been restructured which resulted in an annual saving of \$27,700 as compared to the cost estimate contained in the document UNEP/OzL.Pro/ExCom/40/5/Add.1. However, this saving is offset mainly by an increase in the cost of the professional staff in 2004 (\$9,750) and by taking into account an inflation factor. The draft Agreement provides that an amount of reimbursement to UNEP will remain in effect, unchanged, for a period of 5 years. ExCom decided to start effective September 2003 reimbursing UNEP with \$301,000 annually. It is a normal budgetary practice to factor in inflation which is estimated at 5 per cent per annum. This will result in an average extra annual cost of \$16,580.
- c) There are many other small built-in costs to UNON that cannot be clearly quantified in this budget.

It would be highly appreciated if the above clarification could be made available to the Executive Committee.

Cc: Mr.S.Kakakhel
Mr.M.Gonzales
Mr.H.Brekke

ANNEX

UNEP's Projected Annual Cost of Providing Treasury Service to the Multilateral Fund
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in US\$	
Chief, Budget and Financial Management Service, providing overall guidance on the Multilateral Fund's trusteeship - costing 5% at D-1 level	8,900
Treasurer, providing Multilateral Fund's trusteeship line management services - costing 100 % at P-5 level (reports on the status of the Fund and the Fund financial reports, contributions, fixed exchange rate mechanism, promissary notes, bilateral cooperation assistance, bank account)	169,900
Fund Programme Management Officer - costing 100 % at P-4 level (transfers, disbursements, interest and expenditures, reconciliation of accounts with implementing agencies, various studies requested by the Executive Committee)	142,800
Chief, Projects Accounts Unit, providing accounting services to the Multilateral Fund - costing 10% at P-4 level	14,280
Missions to the meetings of the Executive Committee and other trusteeship related (4 missions @ US7,000.00)	28,000
Support staff (secretaries, finance assistant and treasury assistant) with an overall contribution of 3 staff of GS-6 level (invoicing, receipting, recording contributions, disbursements and expenditures)	82,500
Other general and centrally provided support services inclusive of IT, rent, communication, human resource management, internal and external audit	36,100
Estimated inflation (5% per annum)	16,580
TOTAL	499,060

NB: Costing based on 2004 United Nations Standard Salary Costs for Nairobi duty Station