

PROJECT COOPERATION AGREEMENT
between
THE UNITED NATIONS DEVELOPMENT PROGRAMME
and
PATH

Whereas the United Nations Development Programme ("UNDP") and PATH ("the NGO") have, on the basis of their respective mandates, a common aim in the furtherance of sustainable human development;

Whereas UNDP has been entrusted by its donors with certain resources that can be allocated for programmes and projects, and is accountable to its donors and to its Executive Board for the proper management of these funds and can, in accordance with the UNDP Financial Regulations and Rules, make available such resources for cooperation in the form of a Project;

Whereas the NGO, its status being in accordance with national regulations, is committed to the principles of participatory sustainable human development and development cooperation, has demonstrated the capacity needed for the activities involved, in accordance with the UNDP requirements for management; is apolitical and not profit-making;

Whereas the NGO and UNDP agree that activities shall be undertaken without discrimination, direct or indirect, because of race, ethnicity, religion or creed, status of nationality or political belief, gender, handicapped status, or any other circumstances;

Now, therefore, on the basis of mutual trust and in the spirit of friendly cooperation, the NGO and UNDP have entered into the present Agreement.

Article I. Definitions

For the purpose of the present Agreement, the following definitions shall apply:

- (a) "Parties" shall mean the NGO and UNDP;
- (b) "UNDP" shall mean the United Nations Development Programme, a subsidiary organ of the United Nations, established by the General Assembly of the United Nations;
- (c) "The NGO" shall mean *PATH*, a non-governmental organization that was established in and incorporated under the laws of the State of Washington, United States of America, with the purpose of improving the health of people around the world by advancing technologies, strengthening systems, and encouraging healthy behaviors;
- (d) "The Agreement" or "the present Agreement" shall mean the present Project Cooperation Agreement, the Project Document (Annex), which incorporates the Project Outputs and Activities, Project Work Plan, Project Inputs being provided by UNDP resources, and Project Budget, and all other documents agreed upon between the Parties to be integral parts of the present Agreement;
- (e) "Project" shall mean the activities as described in the Project Document;
- (f) "Government" shall mean the Government of selected *programme country*;
- (g) "UNDP resident representative" shall mean the UNDP official in charge of the UNDP office in the country, or the person acting on his/her behalf;
- (h) "Project Manager" shall mean the person appointed by the NGO, in consultation with UNDP and with the approval of the Government coordinating authority, who acts as the overall co-ordinator of the Project and assumes the primary responsibility for all aspects of it;
- (i) "Expenditure" shall mean the sum of disbursements made and valid outstanding obligations incurred in respect of goods and services rendered;
- (j) "To advance" shall mean a transfer of assets, including a payment of cash or a transfer of supplies, the accounting of which must be rendered by the NGO at a later date, as herein agreed upon between the Parties;
- (k) "Income" shall mean the interest on the Project funds and all revenue derived from the use or sale of capital equipment, and from items purchased with funds provided by UNDP or from revenues generated from Project outputs;
- (l) "*Force majeure*" shall mean acts of nature, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force;
- (m) "Project Work Plan" shall mean a schedule of activities, with corresponding time frames and responsibilities, that is based upon the Project Document, deemed necessary to achieve Project results, prepared at the time of approval of the Project, and revised annually.

Article II. Objective and Scope of the Present Agreement

1. The present Agreement sets forth the general terms and conditions of the cooperation between the Parties in all aspects of achieving the Project Objectives, as set out in the Project Document (Annex of the present Agreement).
2. The Parties agree to join efforts and to maintain close working relationships, in order to achieve the Objectives of the Project. All intellectual property rights related to the Project activities will belong to UNDP. *PATH* and, if applicable, the relevant programme Government, will enjoy a perpetual, world-wide, royalty-free, and non-exclusive license to such intellectual property.

Article III. Duration of Project Agreement

1. The term of the present Agreement shall commence on 8 October 2013 and terminate on 31 March 2014. The Project shall commence and be completed in accordance with the time frame or schedule set out in the Project Document.
2. Should it become evident to either Party during the implementation of the Project that an extension beyond the expiration date set out in paragraph 1, above, of the present Article, will be necessary to achieve the Objectives of the Project, that Party shall, without delay, inform the other Party, with a view to entering into consultations to agree on a new termination date. Upon agreement on a termination date, the Parties shall conclude an amendment to this effect, in accordance with Article XVII, below.

Article IV. General Responsibilities of the Parties

1. The Parties agree to carry out their respective responsibilities in accordance with the provisions of the present Agreement, and to undertake the Project in accordance with UNDP policies and procedures as set out in the UNDP Programme and Operations Policies and Procedures (POPP), which forms an integral part of the present Agreement.
2. Each Party shall determine and communicate to the other Party the person (or unit) having the ultimate authority and responsibility for the Project on its behalf. The Project Manager shall be appointed by the NGO, in consultation with UNDP and with the approval of the government coordinating authority.
3. The Parties shall keep each other informed of all activities pertaining to the Project and shall consult once every three months or as circumstances arise that may have a bearing on the status of either Party in the country or that may affect the achievement of the Objectives of the Project, with a view to reviewing the Work Plan and Budget of the Project.
4. The Parties shall cooperate with each other in obtaining any licenses and permits required by national laws, where appropriate and necessary for the achievement of the Objectives of the Project. The parties shall also cooperate in the preparation of any reports, statements or disclosures, which are required by national law.
5. The NGO may use the name and emblem of the United Nations or UNDP only in direct connection with the Project, and subject to prior written consent of the UNDP Resident Representative in selected programme countries.
6. The activities under the present Agreement are in support of the efforts of the Government, and therefore the NGO will communicate with the Government as necessary. The Project Manager will be responsible for day-to-day contacts with the relevant national authorities and UNDP on operational matters during the implementation of the Project. The UNDP Resident Representative will act as the principal channel for communicating with the Government coordinating authority regarding the activities under the Project Cooperation Agreement unless otherwise agreed with the Parties and the Government.
7. The UNDP Resident Representative will facilitate access to information, advisory services, technical and professional support available to UNDP and will assist the NGO to access the advisory services of other United Nations organizations, whenever necessary.
8. The Parties shall cooperate in any public relations or publicity exercises, when the UNDP Resident Representative deems these appropriate or useful.

Anti-terrorism:

9. The NGO agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under this Agreement are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>. This provision must be included in all sub-contracts or sub-agreements entered into under this Agreement.

Security:

10. The responsibility for the safety and security of the NGO and its personnel and property, and of UNDP's property in the NGO's custody, rests with the NGO.
11. The NGO shall:
 - (a) put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the services are being provided;
 - (b) assume all risks and liabilities related to the NGO's security, and the full implementation of the security plan.
12. UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this contract. Notwithstanding the foregoing, the NGO shall remain solely responsible for the security of its personnel and for UNDP's property in its custody as set forth in paragraph 3.1 above.

Article V. Personnel Requirements

1. The NGO shall be fully responsible for all services performed by its personnel, agents, employees, or contractors (hereinafter referred to as "Personnel").
2. The NGO personnel shall not be considered in any respect as being the employees or agents of UNDP. The NGO shall ensure that all relevant national labour laws are observed.
3. UNDP does not accept any liability for claims arising out of the activities of the NGO performed under the present Agreement, or any claims for death, bodily injury, disability, damage to property or other hazards that may be suffered by NGO personnel to the extent a result of their work pertaining to the Project. It is understood that adequate medical and life insurance for NGO personnel, as well as insurance coverage for service-incurred illness, injury, disability or death, is the responsibility of the NGO.
4. The NGO shall ensure that its personnel meet the highest standards of qualification and technical and professional competence necessary for the achievement of the Objectives of the Project, and that decisions on employment related to the Project shall be free of discrimination on the basis of race, religion or creed, ethnicity or national origin, gender, handicapped status, or other similar factors. The NGO shall ensure that all personnel are free from any conflicts of interest relative to the Project Activities.

Article VI. Terms and Obligations of Personnel

The NGO undertakes to be bound by the terms and obligations specified below, and shall accordingly ensure that the personnel performing project-related activities under the present Agreement comply with these obligations:

- (a) The personnel shall be under the direct charge of the NGO, which functions under the general guidance of UNDP and the Government;
- (b) Further to subparagraph (a) above, they shall not seek nor accept instructions regarding the activities under the present Agreement from any Government other than the Government of *the selected programme country*] or other authority external to UNDP;
- (c) They shall refrain from any conduct that would adversely reflect on the United Nations and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations or the mandate of UNDP;
- (d) Subject to the requirements outlined in the document "UNDP public information disclosure policy", information that is considered confidential shall not be used without the authorisation of UNDP. In any event, such information shall not be used for individual profit. The Project Manager may communicate with the media regarding the methods and scientific procedures used by the NGO; however, UNDP clearance is required for the use of the name UNDP in conjunction with Project Activities in accordance with Article IV, paragraph 5, above. This obligation shall not lapse upon termination of the present Agreement unless otherwise agreed between the Parties.

Article VII. Supplies, Vehicles and Procurement

1. UNDP shall contribute to the Project the resources indicated in the Budget section of the Project Document.
2. Equipment, non-expendable materials, or other property furnished or financed by UNDP shall remain the property of UNDP and shall be returned to UNDP upon completion of the Project or upon termination of the present Agreement, unless otherwise agreed upon between the Parties, and in consultation with the government coordinating authority. During Project implementation and prior to such return, the NGO shall be responsible for the proper custody, maintenance and care of all equipment. The NGO shall, for the protection of such equipment and materials during implementation of the Project, obtain appropriate insurance in such amounts as may be agreed upon between the Parties and incorporated in the Project Budget.
3. The NGO will place on the equipment and meeting presentation materials it furnishes or finances such markings as will be necessary to identify them as being provided by UNDP.
4. In cases of damage, theft or other losses of vehicles and other property made available to the NGO, the NGO shall provide UNDP with a comprehensive report, including police report, where appropriate, and any other evidence giving full details of the events leading to the loss of the property.
5. In its procedures for procurement of goods, services or other requirements with funds made available by UNDP as provided for in the Project Budget, the NGO 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 UNDP.
6. UNDP shall make every effort to assist the NGO in clearing all equipment and supplies through customs at places of entry into the country where Project activities are to take place.
7. The NGO shall maintain complete and accurate records of equipment, supplies and other property purchased with UNDP funds and shall take periodic physical inventories. The NGO shall provide UNDP annually with the inventory of such equipment, property and non-expendable materials and supplies, and at such time and in such form as UNDP may request.

Article VIII. Financial and Operational Arrangements

1. In accordance with the Project Budget, UNDP has allocated and will make available to the NGO funds up to the maximum amount of \$1,110,000 (*One million One hundred and Ten Thousand Dollars*). The first installment of \$550,000 will be advanced to the NGO within 10 working days following signature of the present Agreement. The second instalment will be advanced to the NGO quarterly, when a financial report and other agreed-upon documentation, as referenced in Article X, below, for the activities completed have been submitted to and accepted by UNDP as showing satisfactory management and use of UNDP resources.
2. The NGO agrees to utilise the funds and any supplies and equipment provided by UNDP in strict accordance with the Project Document. The NGO shall be authorised to make variations not exceeding 20 per cent on any one line item of the Project Budget provided that the total Budget allocated by UNDP is not exceeded. The NGO shall notify UNDP about any expected variations on the occasion of the quarterly consultations set forth in Article IV, paragraph 3, above. Any variations exceeding 20 per cent on any one- line item that may be necessary for the proper and successful implementation of the Project shall be subject to prior consultations with and approval by UNDP.
3. The NGO further agrees to return within two weeks any unused supplies made available by UNDP at the termination or end of the present Agreement or the completion of the Project. Any unspent funds shall be returned within sixty (60) days of the termination of the present Agreement or the completion of the Project.
4. UNDP shall not be liable for the payment of any expenses, fees, tolls or any other financial cost not outlined in the Project Work Plan or Project Budget unless UNDP has explicitly agreed in writing to do so prior to the expenditure by the NGO.

Article IX. Maintenance of Records

1. The NGO shall keep accurate and up-to-date records and documents in respect of all expenditures incurred with the funds made available by UNDP to ensure that all expenditures are in conformity with the provisions of the Project Work Plan and Project Budgets. For each disbursement, proper supporting documentation shall be maintained, including original invoices, bills, and receipts pertinent to the transaction. Any Income, as defined in Article I, paragraph 1 (k), above, arising from the management of the Project shall be promptly disclosed to UNDP. The Income shall be reflected in a revised Project Budget and Work Plan and recorded as accrued income to UNDP unless otherwise agreed between the Parties.
2. Upon completion of the Project/or Termination of the Agreement, the NGO shall maintain the records for a period of at least four years unless otherwise agreed upon between the Parties.

Article X. Reporting Requirements

1. The NGO shall provide UNDP and the government coordinating authority with periodic reports on the progress, activities, achievements and results of the Project, as agreed between the Parties. As a minimum, the NGO shall prepare an annual progress report.
2. Financial reporting will be quarterly:
 - (a) The NGO prepares a financial report and submits it to the UNDP Resident Representative no later than 30 days after the end of each quarter, in *English*.
 - (b) The purpose of the financial report is to request a quarterly advance of funds, to list the disbursements incurred on the Project by budgetary component on a quarterly basis, and to reconcile outstanding advances and foreign exchange loss or gain during the quarter.
 - (c) The financial report has been designed to reflect the transactions of a project on a cash basis. For this reason, unliquidated obligations or commitments should not be reported to UNDP, i.e., the reports should be prepared on a "cash basis", not on an accrual basis, and thus will include only disbursements made by the NGO and not commitments. However, the NGO shall provide an indication when submitting reports as to the level of un-liquidated obligations or commitments, for budgetary purposes;
 - (d) The financial report contains information that forms the basis of a periodic financial review and its timely submission is a prerequisite to the continuing funding of the Project. Unless the Financial Report is received, the UNDP Resident Representative will not act upon requests for advances of funds from UNDP;
 - (e) Any refund received by an NGO from a supplier should be reflected on the financial report as a reduction of disbursements on the component to which it relates.
3. Within two months of the completion of the Project or of the termination of the present Agreement, the NGO shall submit a final report on the Project activities and include a final financial report on the use of UNDP funds, as well as an inventory of supplies and equipment.

Article XI. Audit Requirements

1. The NGO shall submit to the Director of the HIV, Health and Development Practice of UNDP a certified annual financial statement on the status of funds advanced by UNDP. The Project will be audited at least once during its lifetime but may be audited annually, as will be reflected in the annual audit plan prepared by UNDP Headquarters (Office of Audit and Performance Review) in consultation with the Parties to the Project. The audit shall be carried out by the auditors of the NGO or by a qualified audit firm, which will produce an audit report and certify the financial statement.
2. Notwithstanding the above, UNDP shall have the right, at its own expense, to audit or review such Project-related books and records as it may require and to have access to the books and record of the NGO, as necessary.

3. Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or the authorized agents of the UNDP at any time during the term of the Agreement and for a period of three (3) years following the expiration or prior termination of the Agreement. The UNDP shall be entitled to a refund from the NGO for any amounts shown by such audits to have been paid by the UNDP other than in accordance with the terms and conditions of the Agreement. Should the audit determine that any funds paid by UNDP have not been used as per contract clauses, the NGO shall reimburse such funds forthwith. Where the NGO fails to reimburse such funds, UNDP reserves the right to seek recovery and/or to take any other action as it deems necessary.
4. The NGO acknowledges and agrees that, at anytime, UNDP may conduct investigations relating to any aspect of the Agreement, the obligations performed under the Agreement, and the operations of the NGO generally. The right of UNDP to conduct an investigation and the NGO's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Agreement. The NGO shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the NGO's obligation to make available its personnel and any documentation for such purposes and to grant to UNDP access to the NGO's premises. The NGO shall require its agents, including, but not limited to, the NGO's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNDP hereunder.

Article XII. Responsibility for Claims

1. The NGO shall indemnify, hold and save harmless, and defend at its own expense, UNDP, its officials and persons performing services for UNDP, from and against all suits, claims, demands and liability of any nature and kind, including their cost and expenses, arising solely out of the acts or omissions of the NGO or its employees or persons hired for the management of the present Agreement and the Project.
2. The NGO shall be responsible for, and deal with all claims brought against it by its employees, agents or subcontractors arising solely out of the acts or omissions of the NGO or its employees or persons hired for the management of the present Agreement and the Project.

Article XIII. Suspension and Early Termination

1. The Parties hereto recognise that the successful completion and accomplishment of the purposes of a technical cooperation activity are of paramount importance, and that UNDP may find it necessary to terminate the Project, or to modify the arrangements for the management of a Project, should circumstances arise that jeopardise successful completion or the accomplishment of the purposes of the Project. The provisions of the present Article shall apply to any such situation.
2. UNDP shall consult with the NGO if any circumstances arise that, in the judgment of UNDP, interfere or threaten to interfere with the successful completion of the Project or the accomplishment of its purposes. The NGO shall promptly inform UNDP of any such circumstances that might come to its attention. The Parties shall cooperate towards the rectification or elimination of the circumstances in question and shall exert all reasonable efforts to that end, including prompt corrective steps by the NGO, where such circumstances are attributable to it or within its responsibility or control. The Parties shall also cooperate in assessing the consequences of possible termination of the Project on the beneficiaries of the Project.
3. UNDP may at any time after occurrence of the circumstances in question, and after appropriate consultations, suspend the Project by written notice to the NGO, without prejudice to the initiation or continuation of any of the measures envisaged in paragraph 2, above, of the present Article. UNDP may indicate to the NGO the conditions under which it is prepared to authorise management of the Project to resume.
4. If the cause of suspension is not rectified or eliminated within 14 days after UNDP has given notice of suspension to the NGO, UNDP may, by written notice at any time thereafter during the continuation of such cause: (a) terminate the Project; or (b) terminate the management of the Project by the NGO, and entrust its management to another institution. The effective date of termination under the provisions of the present paragraph shall be specified by written notice from UNDP.

5. Subject to paragraph 4 (b), above, of the present Article, the NGO may terminate the present Agreement in cases where a condition has arisen that impedes the NGO from successfully fulfilling its responsibilities under the present Agreement, by providing UNDP with written notice of its intention to terminate the present Agreement at least 30 days prior to the effective date of termination if the Project has a duration of up to six months and at least 60 days prior to the effective date of termination if the Project has a duration of six months or more.

6. The NGO may terminate the present Agreement only under point 5, above, of the present Article, after consultations have been held between the NGO and UNDP, with a view to eliminating the impediment, and shall give due consideration to proposals made by UNDP in this respect.

7. Upon receipt of a notice of termination by either Party under the present Article, the Parties shall take immediate steps to terminate activities under the present Agreement, in a prompt and orderly manner, so as to minimise losses and further expenditures. The NGO shall undertake no forward commitments and shall return to UNDP, within 60 days, all unspent funds, supplies and other property provided by UNDP unless UNDP has agreed otherwise in writing.

8. In the event of any termination by either Party under the present Article, UNDP shall reimburse the NGO only for the costs incurred to manage the project in conformity with the express terms of the present Agreement. Reimbursements to the NGO under this provision, when added to amounts previously remitted to it by UNDP in respect of the Project, shall not exceed the total UNDP allocation for the Project.

9. In the event of transfer of the responsibilities of the NGO for the management of a Project to another institution, the NGO shall cooperate with UNDP and the other institution in the orderly transfer of such responsibilities.

Article XIV. Force Majeure

1. In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, as defined in Article I, paragraph 1, above, the Party affected by the *force majeure* shall give the other Party notice and full particulars in writing of such occurrence if the affected Party is thereby rendered unable, in whole or in part, to perform its obligations or meet its responsibilities under the present Agreement. The Parties shall consult on the appropriate action to be taken, which may include suspension of the present Agreement by UNDP, in accordance with Article XIII, paragraph 3, above, or termination of the Agreement, with either Party giving to the other at least seven days written notice of such termination.

2. In the event that the present Agreement is terminated owing to causes constituting *force majeure*, the provisions of Article XIII, paragraphs 8 and 9, above, shall apply.

Article XV. Arbitration

The Parties shall try to settle amicably through direct negotiations, any dispute, controversy or claim arising out of or relating to the present Agreement, including breach and termination of the Agreement. If these negotiations are unsuccessful, the matter shall be referred to arbitration in accordance with United Nations Commission on International Trade Law Arbitration Rules. The Parties shall be bound by the arbitration award rendered in accordance with such arbitration, as the final decision on any such dispute, controversy or claim.

Article XVI. Privileges and Immunities

Nothing in or relating to the present Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations and UNDP.

Article XVII. Amendments

The present Agreement and its Annexes may be modified or amended only by written agreement between the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have on behalf of the Parties hereto signed the present Agreement at the place and on the day below written.

For the NGO:

Signature: Steve Davis
Name: Steve Davis
Title: President & CEO
PATH
Place: 2201 Westlake, Seattle,
WA, 98109
Date: October 8, 2013

For UNDP:

Signature: M Dhalival
Name: Dr. Mandeep Dhaliwal
Title: Director, HIV Health and Development
Bureau for Policy Development Practice
UNDP
Place: 304 East 45th Street,
FF 1194, NY 10017
Date: 17 October, 2013

Annex - Project Document

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