United Nations
Environment
Programme

Distr.
LIMITED

EP

UNEP/OzL.Pro/ExCom/4/5/Rev.3
18 June 1991

ORIGINAL: ENGLISH

Executive Committee of the
Interim Multilateral Fund for the
Implementation of the Montreal Protocol

Fourth Meeting
Nairobi, 17-18 June 1991

DRAFT AGREEMENT

BETWEEN

THE EXECUTIVE COMMITTEE OF THE INTERIM MULTILATERAL FUND

FOR THE IMPLEMENTATION OF THE MONTREAL PROTOCOL

AND

THE UNITED NATIONS DEVELOPMENT PROGRAMME

Background

An Interim Multilateral Fund has been established by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. Operating under the authority of the Parties, it will provide financing of agreed incremental costs, a framework of needed technical co-operation, and the transfer of technologies, to Parties operating under paragraph 1 of Article 5 of the Montreal Protocol to enable their compliance with the control measures set out in Articles 2A to 2E of the Protocol.

The Parties established an Executive Committee to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources for the purpose of achieving the objectives of the Interim Multilateral Fund. The Executive Committee requested implementing agencies, in the context of country programmes developed to facilitate compliance with the Protocol, to co-operate with and assist the Parties within their respective areas of expertise. The selected implementing agencies, which include the United Nations Development Programme, the International Bank for Reconstruction and Development (World Bank) and the United Nations Environment Programme, were invited by the Executive Committee to develop specific agreements with the Executive Committee.

Definitions

The Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer will hereafter be referred to as the "Parties".

The Interim Multilateral Fund Under the Montreal Protocol will hereafter be referred to as the "Fund".

The Executive Committee for the Interim Multilateral Fund Under the Montreal Protocol will hereafter be referred to as the "Executive Committee" and will correspond to the term "Donor" referred to in model United Nations Development Programme Trust Fund agreements.

The Secretariat of the Interim Multilateral Fund Under the Montreal Protocol will hereafter be referred to as the "Fund Secretariat".

The United Nations Development Programme, as an implementing agency, will hereafter be referred to as "UNDP".

In discussion of the related work programmes of other implementing agencies, the International Bank of Reconstruction and Development will hereafter be referred to as "World Bank", and the United Nations Environment Programme will hereafter be referred to as "UNEP".

Scope of Co-operation

The Executive Committee of the Fund has informed UNDP of its willingness to contribute funds (hereafter referred to as "the contribution") to UNDP in order to co-operate and assist in feasibility and pre-investment studies and in other technical assistance measures. UNDP shall apply only those considerations relevant to effective and economically efficient programmes and projects which are consistent with the criteria adopted by the Parties and guidelines adopted by the Executive Committee.

The Trust Fund referred to in paragraph A.1 below shall be utilized to finance projects which UNDP, with the concurrence of both the Executive Committee and the Party concerned operating under paragraph 1 Article 5 of the Protocol, deems appropriate. UNDP is prepared, through a Trust Fund established by its Administrator under its financial regulations and rules, to receive and administer the said contribution.

UNDP, in accordance with its established operating procedures and practices, may designate an executing agency for the implementation of each project financed from the Trust Fund (hereafter referrred to as the "Executing Agency").

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

A. Financial Provisions

1. UNDP shall establish a Trust Fund under its financial regulations and rules for the receipt and administration of the contribution.

2. The Executive Committee shall place at the disposal of UNDP the contribution for agreed activities. To this effect, the Executive Committee shall transfer the agreed amounts for each activity in full, on approval, to the UNDP Contributions Account Number 015-002284, Chemical Bank, New York.

3. All financial accounts and statements shall be expressed in United States dollars.

4. The Trust Fund shall be utilized by UNDP for the purpose of meeting the costs of the projects as set out in the relevant project documents and work programmes as well as the costs of support services relating thereto as specified in paragraph 5 below.

5. The Trust Fund shall be charged with a percentage of all project expenditures made from the Trust Fund which shall, in accordance with UNDP regulations, rules and directives, be utilized by UNDP in reimbursement for support services provided by the selected executing agencies and/or by UNDP itself and would include other support services as required. The amount required for such costs shall be specified in the approved project documents and work programmes.

6. Any interest income derived from contributions to the Trust Fund shall be credited to the Trust Fund in accordance with UNDP procedures.

7. The Trust Fund shall be administered by UNDP in accordance with UNDP regulations, rules and directives, applying its normal procedures for the execution of its projects. Project management and expenditures shall be governed by the regulations, rules and directives of UNDP and, where applicable, the regulations, rules and directives of the selected executing agency.

8. The implementation of the responsibilities of UNDP and of the selected executing agencies pursuant to this Agreement and the relevant project documents and/or work programmes will depend on the timely receipt by UNDP of the contribution in accordance with paragraph 2 above.

9. The aggregate of the amounts budgeted for the projects and work programmes, including the estimated costs of reimbursement of related support services, shall not exceed the total resources available under this Agreement.

10. If unforeseen increases in expenditures or commitments are expected or realized, UNDP shall submit, through the Chief Officer of the Fund Secretariat to the Executive Committee, on a timely basis a supplementary estimate detailing the further financing that will be necessary. The Executive Committee shall use its best efforts to obtain the additional funds required.

11. If the contribution-payments referred to Paragraph 2 above are not received in accordance with the payment schedule as specified in the work programme, or if the additional financing required in accordance with Paragraph 10 above is not forthcoming from the Executive Committee or other sources, the assistance to be provided pursuant to this Agreement may be reduced, suspended or terminated by UNDP. No commitments shall be made by UNDP prior to the receipt of these contribution-payments.

12. Income not spent in a budget year may be carried forward from one year to the next within the financial validity of this Agreement.

13. The accounts shall be subject to the internal and external auditing procedures provided in the financial regulations, rules and directives of UNDP.

14. UNDP reserves the right only to accept a regional or eligible bilateral contribution under the Fund, by a country not operating under paragraph 1 of Article 5, where the provided services can be effectively utilized by the recipient country.

15. At the specific request of the recipient countries operating under paragraph 1 of Article 5 of the Protocol and when technically justified, eligible in-kind support can be provided in the form of expert personnel, technology, technical documentation and training under projects or programmes implemented by UNDP. Such inputs shall be incorporated in the relevant project documents.

16. UNDP shall notify the Chief Officer of the Fund Secretariat and the Executive Committee when all activities relating to the purposes for which the Trust Fund was established have been completed.

17. Notwithstanding the completion of the projects financed from the Trust Fund , UNDP shall continue to hold unutilized contribution-payments until all commitments and liabilities incurred in implementation of the projects have been satisfied and project activities brought to an orderly conclusion.

18. If the unutilized contribution-payments are insufficient to meet such commitments and liabilities, UNDP shall notify the Chief Officer of the Fund Secretariat and will consult both with the Chief Officer and the Executive Committee on the manner in which such commitments and liabilities may be satisfied.

19. In the event of termination of this Agreement, UNDP shall continue to hold unutilized contribution-payments until all commitments and liabilities incurred in implementation of the projects and programmes have been satisfied and project and programme activities brought to an orderly conclusion.

20. Any contribution-payments that remain unexpended after such commitments and liabilities have been satisfied shall be transferred to the Executive Committee through the Chief Officer of the Fund Secretariat.

B. Operational Procedures

21. As specified by the Parties and on the invitation of the Executive Committee, UNDP shall consult regularly with the other implementing agencies and, in particular, with the World Bank and UNEP to facilitate programme coordination and prevent duplication of activities.

22. UNDP, as requested by the Executive Committee in the context of country programmes developed to facilitate compliance with the Montreal Protocol, will cooperate with and assist the Parties within its respective areas of expertise.

23. UNDP, jointly with the Fund Secretariat and other implementing agencies, shall cooperate with the Parties to provide information on funding available for relevant projects, to secure the necessary contacts and to coordinate, when requested by the interested Party, projects financed from other sources with activities financed under the Protocol.

24. The financing of activities or other costs, including resources channeled to third party beneficiaries, shall require the concurrence of the recipient Government concerned. The recipient Government shall be fully associated with the planning of the projects and programmes.

25. The annual UNDP work programme under this Agreement, including proposed budgets, will be submitted through the Chief Officer of the Fund Secretariat to the Executive Committee for approval.

26. In the design and selection of projects, UNDP will follow the Executive Committee's criteria for project eligibility and its guidelines for the implementation of activities supported by the Multilateral Fund.

27. The Executive Committee will consider and, where appropriate, approve country programmes for compliance with the Protocol and, in the context of those country programmes, assess and, where applicable, approve those project proposals or group of project proposals formulated by UNDP independently or by UNDP in co-operation with other implementing agencies where the agreed incremental costs exceed $500,000.

28. The Executive Committee will review any disagreement by a Party operating under paragraph 1 of Article 5 with any decision taken with regard to a request for financing by that Party of a project or projects where the agreed incremental costs are less than $500,000 and where UNDP is involved in whole or in part as an implementing agency.

C. Ownership and Disposal of Property

29. Ownership of equipment, supplies and other property financed from the contribution shall vest in UNDP for the duration of the specific project or programme activity, after which the ownership shall be transferred to the appropriate institution or agency in the recipient country in accordance with the relevant policies and procedures of UNDP, taking into account recommendations that may be received from the Chief Officer of the Fund Secretariat.

D. Participation at Meetings

30. The Administrator of UNDP, or his designated representative, will participate in meetings of the Executive Committee to report and consult on UNDP's activities under these arrangements.

E. Reports

31. As approved by the Executive Committee and in accordance with UNDP accounting and reporting procedures, UNDP shall submit to the Executive Committee through the Fund Secretariat the following reports:

a) semi-annual progress reports on substantive project activities;
b) an annual report on implementation of activities of prior approved work programmes and activities related to country programmes;
c) an annual report on the status of UNDP activities related to country programmes including the activities of concerned UNDP field offices;
d) an annual report on income and expenditures for the previous years; and
e) a revision of the current year's budget, where necessary, and the following year's budget and workplan.

32. UNDP shall contribute to an annual report to be prepared by the Fund Secretariat on the interagency work programme and co-ordination of activities.

33. The Executive Committee will review periodically performance reports on UNDP's implementation of activities supported by the Fund and will monitor and evaluate expenditures incurred. The Executive Committee will transmit its findings to UNDP for comment and follow-up.

F. Settlement of Disputes

34. Any dispute, controversy or claims arising out of, or in connection with, this Agreement or any breach thereof shall, 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 UNDP agree to be bound by any arbitration award rendered in accordance with this section as the final adjudication of any dispute.

G. Amendments or Termination of the Agreement

35. The present arrangements may be amended by agreement in writing between the Executive Committee and UNDP.

36. These arrangements will terminate at the option of either the Executive Committee or UNDP upon six months written notice. The financial provisions governing termination of the Agreement are specified in paragraphs 19 and 20 above.

H. Effective Date of Agreement

37. This Agreement shall enter into force upon signature.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present agreement in two copies.

For the Executive Committee:	For the United Nations Development Programme:
(Signature)	(Signature)
Name:	Name:
Title:	Title:
Date:	Date: