

MEDICINES PATENT POOL FOUNDATION

MEMORANDUM OF UNDERSTANDING

entered into between

the World Health Organization (WHO),
acting for UNITAID
20, avenue Appia
1211 Geneva 27
Switzerland

and

the Medicines Patent Pool Foundation
Chemin Louis-Dunant 17
Geneva 1202
Switzerland

WHEREAS UNITAID is a global health initiative, established to provide sustainable, predictable and additional funding to significantly impact on market dynamics to reduce prices and increase the availability and supply of high quality drugs and diagnostics for the treatment of HIV/AIDS, malaria and tuberculosis for people in developing countries;

WHEREAS UNITAID works through the collaborative efforts of donors, national governments, international organizations, non-governmental organizations;

WHEREAS the World Health Organization (hereinafter referred to as '**WHO**') serves as the host organization for UNITAID and provides its legal identity, Secretariat, Trust Fund, administrative and fiduciary support pursuant to its mandate as the global coordinating agency for public health undertakes in its hosting capacity to enter into this Memorandum of Understanding for the benefit of UNITAID (also collectively referred to as '**WHO/UNITAID**');

WHEREAS the Medicines Patent Pool Foundation (hereinafter also referred to as the '**Foundation**') is an independent non-profit foundation established under the laws of Switzerland to improve health by providing patients in low and middle-income countries with increased access to quality, safe, efficacious, more appropriate and more affordable health products, through a voluntary patent pool

mechanism, initially in the areas of antiretroviral pharmaceutical products, pediatric antiretroviral products and new fixed dose combinations;

WHEREAS the Foundation operates a patent pool (the '**Patent Pool**') by entering into voluntary license agreements with patent holding entities, and sub-license agreements with drug manufacturers and other appropriate sub-licensees, the terms and conditions of which aim to maximize public health benefits;

WHEREAS WHO/UNITAID and the Foundation both recognise the importance of pursuing an approach which is consistent with the WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property as well as being mutually supportive of instruments and declarations relating to access to medicine, such as the World Trade Organization's Declaration on the TRIPS Agreement and Public Health;

WHEREAS WHO/UNITAID and the Foundation seek to collaborate transparently, thereby promoting openness and public confidence;

WHEREAS the Patent Pool is open to all interested licensors who are holders of relevant technology, to licensees and sub-licensees, enabling any interested party to approach the Foundation in view of seeking collaboration;

WHEREAS the aim of the Patent Pool is to issue sub-licenses on a voluntary, non-exclusive and non-discriminatory basis;

WHEREAS all developing countries are included in the scope of the work of the Patent Pool;

WHEREAS in its first five years of operation, the Foundation signed voluntary license agreements for 13 priority antiretroviral ('**ARV**') products with 6 patent holders (each such license being held by the Patent Pool) and 59 sub-license agreements with 14 generic manufacturers, helping to increase access to ARVs in developing countries;

WHEREAS WHO/UNITAID and the Foundation recognise the importance of maintaining the Patent Pool's activities in HIV and expanding its scope to include medicines for the treatment of Hepatitis C virus ("**HCV**") and tuberculosis ("**TB**"). In this regard, during a Governance Board Teleconference of the Executive Board of the Foundation held on 15 September 2015, the Board of the Foundation approved submission by the Foundation to UNITAID of two separate proposals to expand the scope of the Patent Pool to include medicines for the treatment of HCV and TB, and therefore approved the expansion of the mandate of the Patent Pool as set out in the proposals. These decisions are set out in the Governance Board Decision document prepared following the teleconference which is available on the Foundation's website. UNITAID has received a letter from the Chair of the Executive Board of the Foundation dated 26 February 2016 explaining that the Board's decision to approve

expansion of the mandate of the Patent Pool was taken following internal Board discussions commencing in 2013, the results of feasibility studies on the inclusion of HCV and TB prepared by the Foundation, stakeholder consultations and informal discussions between the Board and the management of the Foundation;

WHEREAS the UNITAID Board has adopted the following resolutions in relation to the Patent Pool:

- a. resolution EB 23/6
- b. resolution EB 21/13
- c. resolution EB 15/8
- d. resolution EB 14/15
- e. resolution EB 11 SSPP/1
- f. resolution EB 11/9
- g. resolution EB 10/15
- h. resolution EB-TC-2008/1
- i. resolution EB8/9
- j. resolution EB6/6

WHEREAS in accordance with UNITAID Board Resolution EB11/SSPP/2010/R1, WHO/UNITAID and the Foundation entered into a Memorandum of Understanding (the 'First MoU') on 17 September 2010 setting out the terms and conditions on which UNITAID agreed to provide funding to support the Foundation during an initial period from 15 September 2010 to 14 September 2015. The First MoU was amended by five Letters of Agreement, dated 28 March 2011, 12 May 2011, 30 September 2011, 20 December 2011 and 17 April 2012. In accordance with the Letter of Agreement dated 17 April 2012, the end of the initial period of UNITAID's support to the Foundation was extended from 14 September 2015 to 31 December 2015, in order to align with the calendar year;

WHEREAS under the First MoU (as amended), WHO/UNITAID provided total funding of US \$ 31,151,121 to the Foundation to support its operation during the period from 15 September 2010 to 31 December 2015;

WHEREAS at the 21st meeting of the UNITAID Board on 11 – 12 December 2014, the UNITAID Board adopted Resolution EB21/2014/R13, authorizing UNITAID's Executive Director to commit up to US \$ 29,215,571 to support the operation of the Foundation during a further five year period from 1 January 2016 to 31 December 2020. The UNITAID Board's authorization of this funding is subject to the five conditions set out in that Resolution. The conditions include the negotiation and signature of a legal agreement between the Foundation and UNITAID, the terms of which shall be substantially aligned with the First MoU;

WHEREAS at the 23rd meeting of the UNITAID Board on 4 – 5 November 2015, the UNITAID Executive Board adopted Resolution EB23/2015/R6, authorising the UNITAID Secretariat to expand the scope of the funding agreement to be entered

into between UNITAID and the Foundation for the five year period from 1 January 2016 to include TB and HCV as new disease areas to be addressed by the Foundation;

WHEREAS as at the end of December 2015, the new legal agreement setting out the terms and conditions of the five-year extension of UNITAID support to the Foundation had not yet been signed. As an interim measure, the Parties therefore signed a Letter of Agreement on 16 December 2015 authorising an interim extension to the terms of the First MoU and allowing the Foundation to continue to operate pending signature of the new legal agreement set out herein;

WHEREAS this Memorandum of Understanding cancels and replaces the Letter of Agreement dated 16 December 2015 and will apply retroactively from 1 January 2016 onwards;

NOW, THEREFORE, WHO/UNITAID and the Foundation (hereinafter together referred to as the '**Parties**' and individually as a '**Party**') hereby agree as follows:

1 BACKGROUND

- 1.1. Access to treatment for HIV/AIDS through antiretroviral (ARV) drugs in developing countries is threatened by various challenges: among them increasing treatment needs, the urgent need for adapted treatments for developing country populations, rising drug costs and decreasing financial resources.
- 1.2. New medicines have recently become available for HCV and TB. Specifically, direct acting antivirals, which can cure infection with HCV, are revolutionizing treatment and care for HCV. New medicines for TB offer a much needed opportunity for the treatment of challenging cases of TB, notably multi-drug resistant TB. Unfortunately, access to these new medicines is very limited for people in developing countries.
- 1.3. UNITAID aims to address these and other challenges by using innovative, global market-based approaches to improve public health by increasing access to quality products to treat, diagnose and prevent HIV/AIDS, tuberculosis, malaria and related co-morbidities in developing countries.
- 1.4. By making intellectual property available through its patent pool, the Foundation aims not only to contribute to cost reductions by enhancing competition, but also to facilitate the development of improved and new formulations, thereby expanding access to much-needed medication.
- 1.5. Considering the convergence of aims pursued by the Parties, UNITAID wishes to make a financial contribution to the Foundation and to support the activities of the Foundation as appropriate pursuant to this Memorandum of Understanding ('**MoU**').

2 OBJECTIVES

- 2.1 The declared mission statement of the Foundation is to improve health by providing patients in low and middle-income countries with increased access to quality, safe, efficacious, more appropriate and more affordable health products, through a voluntary patent pool mechanism, initially in the area of antiretroviral pharmaceutical products, paediatric antiretroviral products and new fixed dose combinations.
- 2.2 According to its Statutes, the Foundation shall operate a patent pool ('**Patent Pool**') through which intellectual property is made available, in order to reduce prices, improve access and facilitate the development and production of quality, safe and efficacious health products for use in low- and middle-income countries, pursuing all such lawful activities as may be appropriate to attain its purpose.
- 2.3 In order to attain its purpose, the Foundation may *inter alia* proceed with any of the activities recited in Article 4 of the Foundation's Statutes.

3 DURATION OF THE MEMORANDUM OF UNDERSTANDING

- 3.1 The Parties agree to cooperate during the project period starting 1 January 2016 and ending 31 December 2020 (hereinafter the '**Project Period**').
- 3.2 This MoU may be terminated by the Parties in accordance with the provisions of Article 14 (Termination and Winding Down) below.
- 3.3 Unless terminated by the Parties in accordance with the provisions of Article 14 of this MoU, the Parties shall be free to negotiate the further extension of this MoU in good faith upon expiration of the Project Period.

4 ORGANISATIONAL STRUCTURE

- 4.1 The Foundation has its registered headquarters in Geneva, Switzerland, where it also has its offices.
- 4.2 The Foundation has an organisational structure, operations and activities administered in accordance with the Foundation's Statutes and internal rules, regulations and policies. The Foundation is governed by a Governance Board which is independently responsible for all major decisions pursuant to the Statutes. In addition to its voting members, the Board has the capacity to elect an additional two non-voting Board members, one of whom UNITAID may recommend to the Foundation's Board for appointment.

- 4.3 Moreover, the Statutes allow for the appointment of an Expert Advisory Group, composed of experts in various key disciplines such as public health, law (including pharmaceutical patents), economics, management, and pharmaceutical science, with a broad geographical diversity. The Expert Advisory Group has a consultative function and assists the Governance Board and the Executive Director of the Foundation in key decisions.
- 4.4 Whereas the Foundation is an independent legal entity, it shall serve as a strategic implementation partner for UNITAID. UNITAID shall advocate the mission of the Patent Pool and contribute to the furtherance of the Foundation's purpose.
- 4.5 The Foundation shall take full responsibility for all organisational matters concerning it. In particular, there shall be no secondment of WHO/UNITAID staff members to the Foundation.
- 4.6 As a counterpart, the Foundation shall duly report to UNITAID on the use of UNITAID funding according to the provisions of Article 8 (Reporting and Audit) of this MoU.

5 DESCRIPTION OF KEY ACTIVITIES AND DUTIES

In summary, the major roles and obligations of each Party are outlined below.

5.1 UNITAID:

Under this MoU, UNITAID will:

- Provide the Foundation with an amount of up to US \$ 29,215,571 to facilitate the latter's activities during the Project Period. The amount to be disbursed each calendar year will be within the annual budget for such calendar year set out in Annex 2 (Budget) and approved by UNITAID on an annual basis in accordance with Articles 6.7 and 6.8 of this MoU. Disbursements will be made in accordance with the Schedule of Key Project Events at Annex 4, subject to UNITAID's annual evaluation of satisfactory performance in accordance with the provisions of Article 6.11;
- Use all reasonable efforts to assist the Foundation in the implementation of its outreach and communications strategy with respect to the activities set out in the Project Plan;
- Review the achievements of the Patent Pool on a regular basis; to this end, assess the reports on the progress achieved in

implementation of the pool provided by the Executive Director of the Foundation.

5.2 THE MEDICINES PATENT POOL FOUNDATION:

The Foundation will implement the activities described in the Project Plan attached as Annex 1 with a view to achieving the annual targets set out in the Logframe attached as Annex 3. The Project Plan and Logframe may be updated on an annual basis in accordance with Article 6.7 of this MoU.

If the Foundation subcontracts any of its obligations and/or activities to be carried out under this MoU, it shall do so only to duly qualified third parties of reputable standing and with a sound financial status and track record.

6 PROVISION AND USE OF FUNDS

6.1 The amount payable under this MoU by WHO/UNITAID to the Foundation each calendar year shall be within the annual budget for such calendar year set out in Annex 2 (Budget) and approved by UNITAID on an annual basis in accordance with Articles 6.7 and 6.8 herein.

6.2 The amount of each disbursement of funds shall be determined on the basis of evidence of the Foundation's cash needs. The format for the Foundation's disbursement requests will be provided to the Foundation by UNITAID. The amounts presented by the Foundation in disbursement requests shall be subject to UNITAID's approval and the UNITAID Secretariat may require additional substantiation in support of the amounts requested. The final amounts disburseable will be determined and notified to the Foundation by UNITAID.

6.3 The Foundation will submit disbursement requests to the UNITAID Secretariat in accordance with the timelines set out in the Schedule of Key Project Events attached as Annex 4.

6.4 The Foundation will account to UNITAID for any unexpended balance at the end of each calendar year and this amount shall be offset by UNITAID against future disbursements to the Foundation.

6.5 The first disbursement will include an amount which will be an estimate of the Foundation's funding requirements for approximately five months of operation. This amount will serve as a Rolling Advance throughout the duration of the term of this MoU, in order to ensure that the Foundation remains in funds during any interval from the end of a reporting period until the next requested disbursement is reviewed and released by UNITAID. UNITAID may nevertheless adjust the amount of the Rolling Advance or

withdraw it entirely, in line with the Foundation's actual needs. The Rolling Advance will be taken into account in the calculation of the final disbursement under this MoU. The Foundation will be required to report on the use of the funds through the reporting mechanisms under the MoU.

- 6.6 The opening cash balance of UNITAID funding held by the Foundation as at 1 January 2016 will be taken into account when calculating the amount of the first disbursement to be made to the Foundation pursuant to this MoU.
- 6.7 Each year, in accordance with the timelines set out in Appendix 5 to the Project Plan (Schedule of Key Project Events), the Foundation will review the ongoing validity of Annex 1 (Project Plan), Annex 2 (Budget) and Annex 3 (Logframe). Following this review, the Foundation will submit to UNITAID: (i) any requested amendments to the Project Plan or Logframe (if any); and (ii) a revised Budget for the forthcoming year and future years. The revised Budget and any amendments to the Project Plan or the Logframe will be subject to UNITAID's formal written approval.
- 6.8 For the avoidance of doubt, UNITAID's approval of the Budget each year will constitute final approval of the annual budget for the forthcoming calendar year only. UNITAID's approval of the annual budget for future years will constitute preliminary approval. The annual budget for each calendar year will remain subject to final approval by UNITAID in the preceding year.
- 6.9 Once agreed by both Parties, any amended Annexes shall form an integral part of this MoU, in accordance with Article 11.3.
- 6.10 The Foundation will notify UNITAID as soon as reasonably possible, in the event that a significant expense variation is foreseen for any work stream and /or cost type included in the approved Budget.
- 6.11 Once a year UNITAID shall conduct an evaluation to evaluate whether the Foundation's performance has been satisfactory in accordance with the timelines set out in Annex 4 (Schedule of Key Project Events). The evaluation will be based on the Foundation's reports submitted to UNITAID in accordance with Article 8 (Reporting and Audit) and as set out in the Schedule of Key Project Events. Further funding for the following calendar year will be conditional upon a finding of satisfactory performance. In case of unsatisfactory performance of the Foundation following an annual evaluation, UNITAID shall be entitled to terminate this MoU pursuant to Article 14.4 below.

7 DISBURSEMENT SCHEDULE, PAYMENTS AND OTHER FINANCIAL PROVISIONS

7.1 The following arrangements shall apply with respect to payments by WHO/UNITAID to the Foundation.

i. Currency of payment US Dollars (US\$) shall be used for the purposes of all of the Foundation's disbursement requests to UNITAID, as well as for UNITAID's payments to the Foundation unless, on the basis of consideration of the exchange rates and/or the Foundation's currency needs, the Parties agree that it may be preferable to use Swiss Francs (CHF). In all cases, the value of the payment disbursed will be recorded in US\$ against the overall value of the grant to the Foundation. The prevailing United Nations rate will be used for the conversion of CHF to US\$ for these purposes. Unless otherwise agreed by the Parties, the Foundation's reports to UNITAID shall be submitted in both CHF and USD. The prevailing United Nations rate will be used for the conversion of CHF to USD for this purpose. .

ii. Interest All payments to the Foundation shall be deposited into an interest bearing account held by the Foundation. The Foundation will report on interest income in its financial reports to UNITAID and shall take reasonable measures to optimize interest income within the limits set by the Foundation's financial policies. Any interest accrued on the funds transferred by WHO/UNITAID on the aforesaid account shall exclusively be used by the Foundation for activities covered by this MoU, as agreed to with UNITAID, or be transferred to WHO/UNITAID in accordance with Article 7.2 below.

iii. Bank accounts The details of the Foundation's bank accounts are as follows:

US\$ Account:

SWIFT:	UBSWCHZH80A
Clearing:	0240
Bank Name:	UBS
Beneficiary Account Number:	0240-884847.60X
	IBAN CH05 0024 0240 8848 4760 X
Beneficiary Name:	Medicines Patent Pool Foundation

CHF Account:

SWIFT:	UBSWCHZH80A
Clearing:	0240
Bank Name:	UBS
Beneficiary Account Number:	240-884847.00A
IBAN:	CH54 0024 0240 8848 4700 A
Beneficiary Name:	Medicines Patent Pool Foundation

iv. Financial management The Foundation undertakes to ensure that:

- a. all expenses funded by UNITAID are reasonable, necessary and exclusively incurred for the benefit of the Patent Pool project, in accordance with the Project Plan. The Foundation further warrants that all such expenses shall comply with the Foundation's existing organizational and financial policies, as well as its applicable accounting framework. To the extent that the Foundation's existing organizational and financial policies as well as its applicable accounting framework do not provide sufficient guidance, then the Foundation shall handle such expenses in conformity with generally accepted financial standards.
- b. all expenses relating to the Project are duly approved and documented.
- c. it exercises due diligence in mitigating risks resulting from exchange rate fluctuations in connection with expenses in currencies other than US Dollars. The Foundation agrees to use its best efforts in evaluating such risks and in taking appropriate steps in agreement with UNITAID to minimize any adverse impact on the activities to be carried out under this MoU.

7.2 Any unexpended balance of the WHO/UNITAID funds disbursed to the Foundation which is remaining at the completion of the activities of the Foundation or on termination of this MoU pursuant to Article 14 shall be held by the Foundation at the disposal of WHO/UNITAID, after all obligations incurred for the Patent Pool in accordance with the agreed budget prior to such completion or termination have been fully liquidated.

7.3 The Parties shall use all reasonable efforts to address any problems that may arise with regard to any budgetary matters to achieve the effective implementation of the Patent Pool.

7.4 In the event that the Foundation fails materially to meet its obligations under this MoU, UNITAID may, after advance consultation with the Foundation, suspend all future payments to the Foundation hereunder, provided that UNITAID first provides to the Foundation a written notice of UNITAID's intent to suspend payment and such notice of suspension (i) shall specify the exact nature of the material failure, and (ii) shall permit the Foundation a reasonable time (not less than 10 working days after receipt of the notice by the Foundation) to remedy the failure set forth in the notice. If after 10

working days or any other such reasonable time as specified in the notice of suspension the Foundation continues to be in material breach of its obligations under this MoU, UNITAID may terminate this MoU pursuant to Article 14 below.

8 REPORTING AND AUDIT

- 8.1 In order to ensure efficient use of the funds granted by UNITAID to the Foundation under this MoU and to evaluate the needs of the Foundation in terms of assistance and strategic implementation cooperation, the Foundation shall provide periodic written progress reports to UNITAID on the use of UNITAID funds in accordance with the timelines set out in the Schedule of Key Project Events.
- 8.2 The progress reports to be submitted by the Foundation will include the following components:
- (i) A financial report on the use of UNITAID funding in both CHF and USD in the format of the template to be provided by UNITAID. The prevailing United Nations rate will be used for the conversion of CHF to USD;
 - (ii) A programmatic report on the progress made implementing the activities set out in the Project Plan including: (i) a monitoring and evaluation report setting out the progress of the Foundation against the annual targets included in the Logframe to be submitted using UNITAID's online reporting system; and (ii) a narrative report in the format of Annex 5 (Narrative Reporting Template) to this MoU.
- 8.3 If UNITAID deems necessary, it may request a meeting with the Executive Director and/or the chair of Foundation in order to discuss the issues contained in the reports.
- 8.4 All activity and financial reporting relating to the use of UNITAID funds may be subject to audit by UNITAID and/or parties designated by UNITAID. The Foundation will promptly provide UNITAID with a copy of all statutory financial audits performed by its statutory auditor. In addition, UNITAID may also require the Foundation to instruct its statutory auditor to perform such additional special purpose financial examinations as deemed necessary by UNITAID. In order to facilitate financial reporting and audit, the Foundation shall keep accurate and systematic books of accounts and financial records in respect of the Patent Pool. In addition, the Foundation shall ensure that any obligations entered into and all disbursements made are satisfactorily documented by receipts or other bona fide documentation. For the purposes of activity reporting and audit, the Foundation shall maintain readily accessible operational information and documentation on the progress made

in the implementation of the Patent Pool, and shall make such operational information and documentation available to UNITAID at its first request.

8.5 UNITAID may commission independent external Reviews ("Reviews") of the Foundation at any time during the term of this MoU. Such reviews shall be carried out at UNITAID's expense, by external independent consultants selected by UNITAID. The Foundation shall be informed of the outcome of the selection process in advance of the appointment of the selected consultants. The final appointment of the consultants shall be subject to verification by UNITAID that the Foundation has no reasonable objections to the choice of consultants. For the purposes of any such Review, the Foundation shall maintain accurate, readily accessible operational information and documentation on the progress made in the implementation of the Patent Pool. It shall make such operational information and documentation available to both UNITAID and the independent consultants, in a manner consistent with the Foundation's reasonable confidentiality obligations towards third parties, at their first request and shall provide any requested information, together with clarifications and satisfactory explanations to all queries, in a timely manner. The Foundation shall also ensure that members of the Foundation's Personnel are available to provide information and clarifications to the independent consultants at their request, on reasonable notice. The programmatic reports submitted in accordance with Article 8.2, together with any reasonable comments on the part of the Foundation, shall be taken into account when determining the scope of the Terms of Reference for the Review. The outcome of any Review may be used by the UNITAID Secretariat for the purposes of its evaluation of the Foundation and non-confidential elements of the Review may form the basis of the Secretariat's reports to UNITAID's Executive Board. A copy of the final version of any Review conducted in accordance with this Article 8.5 will also be provided to the Foundation. Further dissemination of the Review by either Party will nevertheless be restricted, in view of the likelihood that the Review will include information of a sensitive and confidential nature.

8.6 The Foundation will report annually to UNITAID on any real or potential conflicts of interest which have been declared under its conflict of interest policy, as set out in the Foundation's By-laws, and the measures that the Foundation has put in place to resolve such conflicts.

9 EXPANSION OF SCOPE OF THE PATENT POOL

9.1 The Foundation will take steps to operationalize the decision of its Board to expand the scope of the Patent Pool to include medicines for the treatment of HCV and TB in accordance with the details set out in the Project Plan and the terms of this MoU.

9.2 The Foundation commits to ensure the timely introduction of any modifications to its governing documents which may be necessary as a consequence of the expansion of scope (if any), as approved by the Board of the Foundation, in order to ensure compliance with Swiss law.

10 ADDITIONAL FUNDING

10.1 For the purposes of this Article 10 (Additional Funding), “**Additional Funding**” shall mean: (i) funding secured in addition to UNITAID’s funding that will be used to finance the activities to be implemented by the Foundation under this MoU as set out in the Project Plan; and/or (ii) funding secured in addition to UNITAID’s funding that will be used to finance other activities and/or expenses undertaken or incurred by the Foundation which support the mission of the Foundation but do not directly contribute to the implementation of the activities required under this MoU as set out in the Project Plan.

10.2 The Foundation shall notify UNITAID in writing prior to taking substantive steps to seek or obtain Additional Funding for the Patent Pool including, without limitation, applying for grants, entering into negotiations with potential donors, or entering into an agreement with a donor to obtain Additional Funding.

10.3 The Foundation will promptly provide UNITAID, in a manner consistent with the Foundation’s reasonable confidentiality obligations to third parties, with any information requested by UNITAID with respect to a source or potential source of Additional Funding for the Patent Pool, including the terms of any agreement entered or to be entered into to secure such funding.

10.4 For the avoidance of doubt, in the event that the Foundation enters or intends to enter into an agreement to secure Additional Funding for the Patent Pool, UNITAID shall be entitled to request the amendment of the terms of this MoU as envisaged in Article 11, with a view to ensuring that UNITAID is not disadvantaged as a result of entry into the agreement by the Foundation to secure such funding.

10.5 Without prejudice to the generality of Article 10.4, in the event that any new donor providing Additional Funding (including the representative or nominee or such a donor) is granted a role in the governance in the Foundation (including without limitation a seat on the Foundation’s Executive Board), the Foundation shall offer to UNITAID equal rights with respect to the Foundation’s governance, or equivalent rights in the event that it is not possible or feasible to grant UNITAID equal rights.

11 CONSULTATION AND AMENDMENT

- 11.1 At the request of any Party or its representatives, consultations shall take place with reference to the implementation, modification or revision of this MoU. The Parties will share relevant information as appropriate to achieve the effective implementation of the Patent Pool and address related matters of mutual concern.
- 11.2 In particular, if reasonable concerns arise as to the progress of the Patent Pool, satisfactory performance of activities and obligations, achievement of milestones, or if for any reason the goals of the Foundation are not being realized, the Parties will consider alternative arrangements and modifications to the Project, including, without limitation, to downsize its scope or reformulate its objectives in consultation with the Governance Board of the Foundation.
- 11.3 This MoU may be modified at any time by the mutual written consent of the Parties.

12 LIABILITY

- 12.1 Each Party shall be solely responsible for the manner in which it carries out its part of the collaborative activities under this MoU. Each Party shall be responsible for the professional and technical competence of its officials, employees, agents, subcontractors, assignees and will select, for work under this MoU, reliable individuals who will perform effectively in the implementation of this MoU, and conform to the highest standard of moral and ethical conduct.
- 12.2 A Party shall not be responsible for any loss, accident, damage or injury suffered or caused by the other Party or by a third party, or by any Party's staff or sub-contractors, in connection with, or as a result of, the collaboration under this MoU. In particular, the Foundation shall indemnify and hold harmless WHO/UNITAID for any claims, including third party claims, liabilities and/or disputes (including legal fees and costs) which may arise in connection with or as a result of, the operational activities to be performed by the Foundation under this MoU (or the activities of any of the Foundation's officials, agents, employees, subcontractors, assignees or suppliers) for which the Foundation shall assume full and sole responsibility.
- 12.3 The Foundation shall make appropriate insurance arrangements to cover liability risks covering the activities conducted by its officials, employees, agents, subcontractors, assignees relating to this MoU.

13 CONFIDENTIALITY

13.1 Each Party to this MoU agrees to take into account and respect commitments of confidentiality undertaken by the other Party hereto, when information is shared regarding the transactions and activities covered by the provisions of this MoU. When information provided in the context of this MoU is described by the party providing it as confidential, the receiving party shall take all reasonable measures to keep the information confidential and shall only use the information for the purpose for which it was provided. The receiving party shall ensure that any persons having access to the said information shall be made aware of and be bound by similar obligations of confidentiality and restrictions on use as contained herein.

13.2 However, there will be no obligations of confidentiality or restrictions on use, to the extent that the party receiving the information is clearly able to demonstrate that any part thereof:

(a) was known to it prior to any disclosure by the disclosing party; or

(b) was in the public domain at the time of disclosure by the disclosing party; or

(c) becomes part of the public domain through no fault of the receiving party; or

(d) becomes available to the receiving party from a third party not in breach of any legal obligation of confidentiality; or

(e) must be disclosed on the basis of a duty provided by legal provisions or a valid order of a court or other governmental authority having jurisdiction.

13.3 Unless another period is stipulated by the Party providing the information, the obligations of this Article shall continue for a period of ten years after the termination of this MoU.

13.4 The Foundation will ensure that any obligations of confidentiality undertaken to third parties in the context of the activities set out in the Project Plan including, without limitation, the obligations referred to in Articles 8.5 and 10.3 of this MoU, do not go beyond what is reasonably necessary to protect such parties and the information concerned.

14 TERMINATION AND WINDING DOWN

14.1 UNITAID may terminate this MoU at any time upon six (6) month's written notice to the Foundation with a stated reason, subject to the settlement of outstanding obligations.

14.2 Without prejudice to UNITAID's right to terminate in accordance with Article 14.1, the Parties may also decide to terminate this MoU by mutual written

consent. In this event such termination will be subject to a notice period to be mutually agreed upon between them and no less than three months.

- 14.3 If a Party becomes insolvent or any bankruptcy proceedings are instituted by or against the Party, or the Foundation has a receivership order issued against it or its assets, or the Party formally seeks any other relief from its financial obligations or if a Party breaches any of its material obligations hereunder and fails to resolve such breach within twenty (20) working days after receipt of a written notice to that effect from the other Party, that other Party will be entitled to terminate this MoU with immediate effect (in addition to such other rights it may have), subject to the settlement of any outstanding obligations.
- 14.4 UNITAID shall in particular be entitled to terminate this MoU subject to a two (2) months written notice if the performance of the Foundation, as evaluated by UNITAID pursuant to Article 6.11 above, is judged unsatisfactory at the end of a funding year.
- 14.5 In cases of force majeure such as set out under Article 15 below, the period of notice for termination of this MoU shall be of ten (10) working days.
- 14.6 In the event of termination of this MoU for whatever reason, the Parties will negotiate and agree in good faith with a view to agreeing on the most efficient, responsible, and ethical manner of winding down operations under this MoU (including compliance with any outstanding reporting obligations).
- 14.7 Upon the expiration or earlier termination of this MoU, the Foundation shall return to WHO/UNITAID any and all funds which have not been expended or committed on the Project in accordance with the terms of this MoU.

15 FORCE MAJEURE

- 15.1 'Force majeure' as used in this paragraph means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.
- 15.2 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence if that Party is thereby rendered unable, wholly or in material part, to perform its obligations and meet its responsibilities under this Memorandum of Understanding and that Party shall be relieved of these obligations and responsibilities for so long as such circumstances prevail.

- 15.3 If a Party is rendered permanently unable, wholly, or in material part, by reason of force majeure to perform its obligations and meet its responsibilities under this Agreement, the other Party shall have the right to suspend or terminate this Agreement, the period of notice being of ten (10) working days.

16 COMMUNICATIONS

- 16.1 Communications activities shall be conducted by the Parties in accordance with the Communications Approach set out in the Project Plan.
- 16.2 The Parties acknowledge that public outreach and media advocacy are critical to the success of the Foundation and its ability to develop a sufficient portfolio of licences. The Parties further acknowledge that UNITAID's participation in the Foundation's public outreach and media advocacy effort is important in contributing to the success of the Patent Pool.
- 16.3 Accordingly, UNITAID agrees to fully cooperate to the maximum extent feasible in the Foundation's public outreach and media advocacy with regard to the Patent Pool. In this context, UNITAID will use all reasonable efforts to promote and advocate the Foundation's mission and goals to the extent consistent with UNITAID's mission and goals.
- 16.4 In order to implement a coordinated public communications strategy, the Parties may hold joint press conferences or publish joint press releases to announce achievements of the Foundation. Moreover, jointly-organised events may be held in furtherance of the mutually shared mission and goals of the Parties.
- 16.5 Neither Party shall make use of the logo or emblem of the other Party (including the name and emblem of WHO) without prior written permission from that other Party or WHO as the case may be.

17 DISPUTE RESOLUTION

- 17.1 The Parties shall use all reasonable best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to this MoU or any other disagreement on any aspect of the implementation or execution of the activities of the Foundation. Upon request of any Party, the reasons for its dissatisfaction will be set out in writing and the cause of the dispute, controversy or claim will be discussed by the Parties involved, and the Parties shall use all reasonable efforts to resolve such dispute, controversy or claim through amicable and good faith negotiation. If after further consultations no satisfactory agreement can be reached to resolve the

matter, either party may refer the matter for arbitration in accordance with the following paragraph.

- 17.2 Any matter relating to the interpretation or application of this MoU which is not covered by its terms shall be resolved by reference to the laws of Switzerland. In the event that a dispute, controversy or claim between the Parties arising out of or relating to this MoU is not settled amicably, such claim or dispute shall be settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce then in effect. The Parties agree to be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such dispute, controversy, or claim. The number of arbitrators shall be three. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English.

18 NOTICES

- 18.1 Any notices required under this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail or by successful facsimile transmission to the following addresses:

To: UNITAID Executive Secretariat
c/o World Health Organisation
Avenue Appia, 20
1211 Geneva 27
Switzerland

Attention: Robert Matiru. Director Operations
Tel. nr: +41.79.477.1743
Email: matirur@unitaid.who.int

To: The Medicines Patent Pool Foundation,
Chemin Louis-Dunant 17,
1202 Genève

Switzerland

Attention: Chan Park, General Counsel
Tel. nr: +41.22.533.5050

- 18.2 or such other addresses as either party shall have notified the other party. Any notice shall be deemed to have been given or made on the date it is hand-delivered, registered or transmitted from the sender's facsimile, but any assumption of actual notice shall be subject to rebuttal to show that it has not actually been received.

19 MISCELLANEOUS

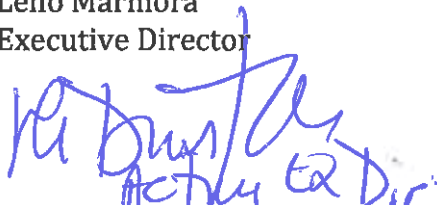
- 19.1 If during the term of this MoU, there is a change of the legal status of UNITAID, such as a change in the hosting or administering agency, such that UNITAID becomes a legal entity, the Foundation shall agree to enter into a new agreement with that legal entity under the same terms and conditions as this MoU if required by that entity.
- 19.2 The Foundation warrants that no UNITAID Board member or WHO official, including any member of the UNITAID Secretariat, or any other United Nations official has received or will be offered by the Foundation any direct or indirect benefit arising from this MoU. The Foundation agrees that the breach of this provision is a breach of an essential term of this MoU.
- 19.3 Nothing in or relating to this MoU shall be deemed a waiver of any of the privileges and immunities of WHO, including the UNITAID Secretariat by virtue of the hosting arrangement with WHO, in conformity with the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on November 21, 1947 or otherwise under any national or international law, convention or agreement.
- 19.4 Nothing in this MoU or the operation of the Patent Pool shall be construed in a way that could undermine, limit or interfere with domestic law and regulations of individual countries.
- 19.5 Failure of either Party to insist upon strict observance of, or compliance with, any of the terms of this MoU in one or more instances, will not be deemed to be a waiver of its right to insist upon such observance or compliance in the future.
- 19.6 The Annexes attached hereto form an integral part of this MoU. The headings used in this MoU are for convenience only and will not be construed as having any meaning in the interpretation of this MoU. In the event this MoU contains any provisions which are in conflict with any of the provisions of any of the Annexes, the provisions of this MoU shall take precedence.
- 19.7 This MoU may be executed in two or more counterparts, each of which shall be deemed an original and together shall constitute one agreement.

IN WITNESS WHEREOF this Memorandum of Understanding has been entered into on 1 March 2016 by the duly authorised representatives of the Parties.

IN WITNESS WHEREOF this Memorandum of Understanding has been entered into on 1 March 2016 by the duly authorised representatives of the Parties.

Agreed on behalf of the World
Health Organisation acting for
UNITAID

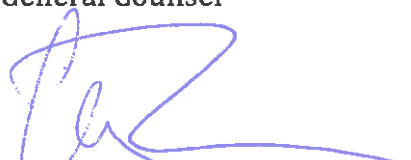
Lelio Marmora
Executive Director



Date: 1 March 2016

Agreed on behalf of the Medicines
Patent Pool Foundation

Chan Park
General Counsel



Date: 1 March 2016