

# Legal Framework

## UNDP Global Fund Implementation Guidance Manual

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# Legal Framework

## Overview

During the grant lifecycle, UNDP enters into numerous legal agreements with the Global Fund and other parties such as Sub-recipients (SRs) and vendors, utilizing the following key instruments, among others:

- Project document/multi-year work plan between UNDP and the programme government
- Grant Agreement between UNDP and the Global Fund
- Grant agreements between UNDP and SRs
- Contracts with other responsible parties such as vendors, service contractors and individual contractors

In addition, where UNDP is engaged for roles other than that of Principal Recipient (PR), it may enter into the following agreements:

- Country Coordinating Mechanism (CCM) funding agreement with the Global Fund
- Constituency funding agreement with the Global Fund
- Cost-sharing agreements with governments (e.g. on capacity development with a procurement component)
- Memorandum for provision of services

With the exception of agreements concluded with the Global Fund (e.g. Grant Agreements and subsequent instruments such as implementation letters, as well as CCM funding agreements or constituency funding agreements) and non-PR engagements, no legal clearance is required prior to signature of an agreement *unless* deviations from the terms of the templates are proposed. Nevertheless, Country Offices (COs) are encouraged to seek the advice of the Legal Office (LO), Bureau for Management Services (BMS), with any questions about any of the provisions included in the templates.



### Practice Pointer

All agreements entered into by UNDP with the Global Fund must be reviewed and cleared by LO and the UNDP Global Fund/Health Implementation Support Team.

In view of the unique programmatic and legal challenges involved, as well as the highly specialized expertise required, LO and the UNDP Global Fund/Health Implementation Support Team should also be consulted on all non-PR engagements, such as support to a national PR or health implementation support to a government entity, even if the latter does not receive any Global Fund resources. Please see [here](#) for further information on legal framework for other UNDP support roles.

## Project Document

Except for matters specifically agreed to in a Grant Agreement, UNDP uses its standard operational framework for implementing Global Fund grants. Art. 2(a) of the UNDP–Global Fund Grant Regulations annexed to the **Framework Agreement** concluded between UNDP and the Global Fund on 13 October 2016 (Grant Regulations) recognizes that UNDP will “*implement or oversee the implementation of the Program in accordance with UNDP regulations, rules, policies and procedures and decisions of the UNDP Governing Bodies, as well as the terms of the relevant Grant Agreement.*” The term “UNDP Governing Bodies” principally refers to the United Nations General Assembly, Executive Board and internal oversight bodies (such as the Chief Executive Board (CEB), High Level Committee on Management (HLCM) and the UNDP Executive Group) and such other organs of the United Nations that possess the authority to pass decisions of general applicability under the Charter of the United Nations or the legal framework of UNDP.

Project implementation must comply with the **UNDP Programme and Operations Policies and Procedures (POPP)**, and, particularly the section on **Programmes and Projects**. Effective 1 March 2016, UNDP launched programming reforms that include new quality standards, new monitoring policy, revised project document template and changes to the Country Programme Action Plan (CPAP) requirement. Further information on UNDP’s programming reforms and access to the revised guidance and templates are available [here](#).

As Principal Recipient (PR), UNDP is legally responsible and financially accountable for implementation results. The nature of these responsibilities, as well as the high level of legal and financial exposure involved, call for the use of the Direct Implementation Modality (DIM) as the optimal implementation modality. As defined in the **UNDP POPP**, the requisite approvals need to be obtained for grants implemented under the DIM modality and Global Fund grants have, as a rule, been implemented under this modality.

However, in cases where UNDP provides support to a national PR or a government entity that seeks assistance with health implementation, the National Implementation Modality (NIM) may be the most appropriate framework, with the national PR or government entity serving as UNDP's implementing partner. For such engagements, the UNDP Legal Office (LO) and the UNDP Global Fund/Health Implementation Support Team should be consulted on legal and programmatic arrangements.

## The Grant Agreement

UNDP and the Global Fund have agreed on the [Guidelines on Negotiating Grant Agreements](#) (standard operating procedures (SOPs) for grant-making), which contain corporate guidance on the basic principles of grant-making, model language for exceptional conditions precedent and special conditions, examples of conditions that must be avoided, and corporate templates for all grant-related documents. The SOPs should be consulted for all matters relating to the Grant Agreement.

A Grant Agreement is a formal financing agreement between UNDP (through a UNDP Country Office (CO)) and the Global Fund. It consists of: (i) the Framework Agreement, including the UNDP-Global Fund [Grant Regulations](#); and (ii) [Grant Confirmation](#) setting forth a face sheet, conditions and Schedule 1, comprising of the integrated grant description, summary budget, and a performance framework (PF).

Negotiations of Grant Agreements are guided by the following basic principles:

- A clear schedule of negotiations should be agreed between UNDP and the Global Fund at the outset, with advance planning of negotiations and commitment to agreed timelines. An example of a schedule of negotiations can be accessed [here](#).
- The legal teams of both sides and the UNDP Global Fund/Health Implementation Support Team should be engaged at an early stage, with a view to ensuring that the CO does not get involved in lengthy negotiations on terms that are inconsistent with the legal framework.
- There should be a clear understanding that grants are implemented pursuant to [UNDP regulations, rules, policies and procedures](#), and decisions of its Governing Bodies.
- Conditions to the Grant Agreement should be kept to a minimum.

From the legal and programmatic perspectives, the grant-making process involves **two principal milestones**: (i) negotiation of grant documents for the purpose of submission to the Global Fund's Grants Approval Committee (GAC), where applicable and (ii) finalization and clearance of the grant documents for the purpose of signature.

GAC is a committee of senior management at the Global Fund and technical and bilateral partners, and its key task is to set the upper funding ceiling for the grant. Since GAC normally reviews the draft Grant Agreement for compliance with recommendations made by the Technical Review Panel (which, in turn, evaluates the country's funding request (formerly called the 'concept note'), negotiations must be substantially completed and **grant documents reviewed** by the UNDP Legal Office (LO) for legal issues and by the UNDP Global Fund/Health Implementation Support Team for operational and programmatic issues, before being submitted to GAC.

Based on GAC's recommendations, the grant documents are submitted to the Global Fund Board for final approval. Once approved, the grant can be finalized for signature. At this last stage, **the grant documents must be cleared** by LO for legal issues and by the UNDP Global Fund/Health Implementation Support Team for operational and programmatic issues. At this stage, some changes to the grant are still possible, including removal of conditions that have been met and discreet revisions to the performance framework (PF) and budget.



### Practice Pointer

Countries are often eager to receive their first disbursement and start implementation. It is best practice to postpone the programme start date and complete the necessary preparatory work (work plan and budget, a list of health products to be procured, monitoring and evaluation (M&E) plan, and Sub-recipient (SR) agreements), before the programme starts, to ensure that agreed targets will be met and the grant renewed. SR agreements should be signed immediately upon signature of the Grant Agreement, not before.

## UNDP-Global Fund Grant Regulations

UNDP and the Global Fund have concluded the [Framework Agreement](#), including the Grant Regulations tailored to UNDP. The Grant Regulations cover all the fundamental aspects of grant implementation and include the following key provisions:

- UNDP implements grants "*in accordance with UNDP regulations, rules, policies and procedures and decisions of the UNDP Governing Bodies, as well as the terms and conditions of the relevant Grant Agreement.*" See 2(a) of the Grant Regulations. Under no circumstances should the Global Fund's policies govern, or in any way apply to, grant implementation.

- UNDP selects and manages **Sub-recipients (SRs)** in accordance with its rules and procedures. However, it must ensure that SR agreements comply with the terms of the Grant Agreement, including an anti-terrorism clause in Art. 3(f) of the Grant Regulations. In addition, UNDP must have systems in place to assess SR capacity and, in the case of insufficient capacity, it must consult with the Country Coordinating Mechanism (CCM), the Regional Coordinating Mechanism (RCM) or the Regional Organization (as the case may be), as well as the Global Fund on how such shortfalls can be addressed. (See Art. 10(b) of the Grant Regulations.)
- UNDP is fully responsible for the results to be achieved by SRs and is accountable for all funds disbursed to them, as well as for the SRs' activities. (See Art. 10(b) of the Grant Regulations.) The Global Fund can request a refund from UNDP if goods or services financed or supported under the Grant Agreement are not used in accordance with the agreement. (See Art. 8(b) of the Grant Regulations.) If the Global Fund believes that a refund is warranted, it must write to UNDP Headquarters. If the matter is not resolved within 30 days, then GF can ask for a refund within 60 days. This formal consultation mechanism ensures that the UNDP senior management is aware of a request for refund and can address it expeditiously and appropriately.
- The Grant Regulations recognize **the special status of UN SRs**. More specifically, they clarify that UN SRs (i) are subject to their own oversight and control systems (Art. 10(b)(iv)); (ii) can maintain title to the fixed assets and manage them according to their rules (Art. 17(c)), and (iii) are not audited by UNDP (Art. 7(d)(ii)).
- UNDP has a number of **reporting obligations** towards the Global Fund. Among other things, it has a duty to provide (i) periodic progress reports (Art. 13); (ii) quarterly cash balance reports (Art. 13); (iii) a copy of its externally audited financial statements covering each year in which Grant Funds are expended, together with the opinion of its external auditors on such statements, not later than thirty (30) days after such audited financial statements and opinion are published (Art. 7(b)(iv)); (iv), a certified financial statement of income and expenditure of the Program during the preceding year, which is due no later than June 30 of each year; and (v) financial expenditure reports on the use of funds by UN SRs, prepared in accordance with the financial regulations and rules applicable to such Sub-recipients. Further guidance on financial reporting can be found in the **financial management section** of the Manual.
- 21 of the Grant Regulations sets forth a number of deliverables due from UNDP in connection with **grant closure**. Further guidance on closure can be found in the **financial management section** of the Manual.
- Pursuant to Art. 7 of the Grant Regulations, UNDP **audits its programme expenditures** “in accordance with its internal and external auditing practices”. Audits are conducted by the UNDP Office of Audits and Investigations (OAI). With regard to SRs, UNDP must consult with the Global Fund on an SR audit plan and, upon the Global Fund's request, furnish it with a copy of the SR audit reports. More information on PR and SR audits can be found in the **audit section** of the Manual.
- In countries falling under the Global Fund's Additional Safeguards Policy, the Global Fund may request a **special purpose audit**, the cost of which shall also be borne by the programme. Should such an audit be requested, UNDP must (i) secure the appointment of a mutually agreed independent auditor and (ii) prepare the terms of reference for the audit, which must be mutually agreed with the Global Fund. The Global Fund's request for a special purpose audit must be handled in conformity with the working arrangements agreed between the independent oversight offices of the Principal Recipient (PR) and the Global Fund. (See Art. 7(b) of the Grant Regulations.) Further guidance on ASP audit is available in the **audit section** of the Manual.
- UNDP has an obligation to cooperate with the Global Fund's Local Fund Agents (LFA) (See Art. 10(d)). This includes ensuring access to non-UN SR documents, including any supporting documents provided by non-UN Sub-recipients to UNDP, in line with UNDP guidance notes. This primarily refers to the **LFA Guidance Note**.
- UNDP retains title to **goods and other property** financed under the Grant Agreement, which it can also pass on to a third party such as an SR (see Art. 17 of the Grant Regulations), and ensures that such property is devoted to the programme financed by the Global Fund. At the end of the programme, UNDP transfers and/or disposes of the remaining property according to its rules and in consultation with the Global Fund (see 19 of the Grant Regulations). Although the Global Fund's approval is not required for such transfer and/or disposal, it is considered best practice to seek its agreement, as well as the endorsement of the CCM, RCM or RO (as the case may be), on the transfer of assets to the national SRs at the end of the programme. Further guidance is available in the **financial management section** of the Manual.
- UNDP commits to comply with certain **human rights standards**, including non-discriminatory access to services for all, including people in detention; employing only scientifically sound and approved medicines or medical practices; not employing methods that constitute torture or that are cruel, inhuman or degrading; respecting and protecting informed consent, confidentiality and the right to privacy concerning medical testing, treatment or health services rendered; and avoiding medical detention and involuntary isolation, which, consistent with the relevant guidance published by the World Health Organization, are to be used only as a last resort. UNDP is under an obligation to communicate such standards to its SRs and suppliers, as well as to inform the Global Fund of any cases of non-compliance. See Art. 29 of the Grant Regulations.
- The Framework Agreement recognizes a voluminous body of corporate agreements and tailored instruments developed by UNDP and the Global Fund over the many years of the partnership. It provides that such practice will be codified through the **joint Operational Guidelines**, which will substantially reduce transaction costs and allow the two organizations to record institutional memory. The Operational Guidelines are currently under development.

The Framework Agreement, including the Grant Regulations, have been agreed corporately between UNDP and the Global Fund; they are not negotiable and cannot be modified. They are to be used without deviations in all countries where UNDP acts as PR, to ensure a consistent legal regime for all UNDP Country Offices (COs).



### Practice Pointer

Due to the legal and financial exposure, all Global Fund requests for refund must be immediately referred to the Legal Office and the UNDP Global Fund/Health Implementation Support Team.

## Grant Confirmation

Every **Grant Confirmation** includes a face sheet, conditions (if any) and Schedule 1, consisting of the integrated grant description, performance framework, and summary budget. Please click "next" or select items from the left-hand menu for more information on the components of the Grant Confirmation.

### Grant Confirmation: Face Sheet

A Grant Confirmation sets forth a **face sheet** that requires Country Office (COs) to fill in information specific to their programme. The COs must, among other things, indicate the following:

- **Implementation period dates (cell #3.7):** These are the dates on which programme activities during the relevant implementation period (e.g. grant extension) will formally commence and end. They should be in line with UNDP's fiscal year, which runs from 1 January to 31 December. Should a different period be requested by the Global Fund, please consult the UNDP Legal Office (LO) and the UNDP Global Fund/Health Implementation Support Team.
- **Grant funds (cell #3.6):** This line indicates the maximum grant amount, the ceiling up to which UNDP can request disbursement during the current implementation period. This amount does not include any cash balance that may remain with UNDP from the previous implementation period or from another grant in the case of consolidation. This means that the grant budget may be for a higher amount than that indicated in the face sheet, as it may include the grant funds (i.e. the amount allocated for the current implementation period) and, for example, cash balance from the previous implementation. As a general principle, a footnote should be added to the summary budget indicating that a part of the budget is being funded by available in-country cash balances and stipulating the amount of cash balance.
- **Grant currency:** For the purposes of UNDP reporting and Atlas requirements, the US dollar is the preferred currency of the grant. However, the grant may also be in EURO. One or the other currency should be indicated in the face sheet. If there is an attempt by the Global Fund to enter another currency, the matter should be referred to the UNDP Global Fund/Health Implementation Support Team.

In addition to the face sheet, the Global Fund online system (SalesForce) necessitates that two additional forms be filled out: the bank account information form and the contact information form. The advantage of these forms is that they can be updated at any time, without the need for an implementation letter to be issued, as was the case prior to 2014. Further guidance on banking arrangements is available in the **financial management section** of the Manual.

### Grant Confirmation: Conditions

The **Grant Confirmation** should only contain programmatic material with no conditions precedent (CP) or special conditions (SCs). However, since the Global Fund often insists on CP and/or SCs, the Grant Confirmation must be negotiated with close and timely involvement of the UNDP Legal Office (LO) and the UNDP Global Fund/Health Implementation Support Team, so as to avoid delays in grant signature.

CP and SCs should only be introduced exceptionally, only in cases where no other means of addressing the issue covered by the proposed CP or SC exists. The few CP and SCs that may remain in Grant Confirmation must:

- be consistent with the Grant Regulations and **UNDP regulations, rules, policies and procedures**, as well as decisions of its Governing Bodies, which govern grant implementation;
- not duplicate the Grant Regulations or other, more appropriate, instruments such as a performance framework or workplan tracking measures;
- not relate to regular day-to-day grant management;
- be supported by strong justifications based on the specific grant context;

- be realistic, achievable and supported by sufficient grant budget and/or other financial resources; and
- comply with the corporately agreed language in the [SOPs on grant-making](#).



#### Practice Pointer

The Country Office (CO) should share any draft grant documents with LO and the UNDP Global Fund/Health Implementation Support Team as soon as such documents are received from the Global Fund.

## Grant Confirmation: Conditions Precedent (CP)

Conditions precedent (CP) are conditions that must be achieved before the use of funds is authorized under the Grant Agreement. As previously noted, they should only be introduced exceptionally, when there is no other means of addressing an issue intended to be covered by the proposed condition. Such means would include regular grant-related communications, the performance framework or workplan tracking measures. All CP must be thoroughly negotiated with the assistance of the UNDP Legal Office (LO) and the UNDP Global Fund/Health Implementation Support Team, and all alternatives for addressing the matter carefully considered before a CP is introduced.

A typical example of an exceptionally approved CP is a plan for certain activities (e.g. civil works or training), which must be approved by the Global Fund before the funds can be used by UNDP to finance those activities.

In this respect, it should be noted that front-loading the planning is essential to ensure uninterrupted and efficient grant implementation. Therefore, and unless for programmatic reasons a plan cannot be developed prior to signature (e.g., a waste management plan that requires technical assistance), every effort should be made to agree on the required plan or plans before signature. To avoid an undue administrative burden, it is advised to rely on regular grant-related communications instead of a condition where a plan is substantially finalized and UNDP commits to have it formally approved by the Global Fund immediately or shortly following grant signature. In other words, unless the planning is not advanced and the underlying activity is of high value, volume or complexity, the Global Fund's request for a plan can and should be achieved through means other than a CP.

It should also be noted that, according to Art. 14 of the [Grant Regulations](#), a monitoring and evaluation (M&E) plan is due within 90 days after the Grant Agreement enters into force. Therefore, there is no need to repeat a condition for the same purpose. It is recommended, however, that an M&E plan is agreed and approved as early as possible, ideally before grant signature. Likewise, procurement of health products can only take place once the Global Fund approves a list of health products in accordance with Art. 18 of the Grant Regulations and the Global Fund Health Products Guide. Hence, a CP requiring the Fund's approval of a health procurement plan is superfluous.

Each CP usually has a terminal date, e.g. a date by which completion is due. If a CP is not met by the terminal dates, this can seriously delay the next disbursement of funds and grant implementation activities while the reasons for such failure and the next steps are being determined. The Global Fund may terminate the Grant Agreement by written notice to UNDP. Alternatively, the Global Fund may reduce the amount of its disbursement decision or the amount of a particular cash transfer. Such reduction will normally amount to the total funds budgeted for the activities under the relevant unfulfilled CP.

In addition, failure to meet a CP may also lead to delays with implementation, affect programme delivery, and lead to a lower grant performance rating. It is therefore most important to keep CP to the minimum and where they are agreed devote sufficient resources to their timely completion.

Under Art. 3 of the Grant Regulations, the Global Fund is required to notify the PR when a CP has been met. It is important to ensure that this notification is received in writing, to prevent any potential misunderstanding as to whether the CP is still outstanding.



### Practice Pointer

The CP can only be introduced exceptionally and upon approval of LO and the UNDP Global Fund/Health Implementation Support Team. The exceptionally approved CP must be realistic, achievable and under UNDP control. There should be financial resources available either from the grant or from other sources to meet the CP. The CP must also be consistent with the [SOPs on grant-making](#). The CP normally have terminal dates. If a CP is not met by the terminal date, the Global Fund may unilaterally reduce the amount of the annual disbursement decision and/or cash transfer. Failure to meet a CP may also lead to delays with implementation, affect programme delivery, and lead to a lower grant performance rating.

UNDP and the Global Fund have agreed on some standard language for a number of CP, which can be found in the [SOPs on grant-making](#). The SOPs also contain examples of conditions that must be avoided.

## Grant Confirmation: Special Conditions (SCs)

Like the conditions precedent (CP), special conditions (SCs) are exceptional conditions intended to set forth a number of additional requirements for a particular grant. The UNDP–Global Fund [SOPs on grant-making](#) contain model language for SCs that may exceptionally be included in the [Grant Confirmation](#), as well as examples of SCs that should be avoided.



### Practice Pointer

The Country Office (CO) must submit each Grant Confirmation to the UNDP Legal Office (LO) and the UNDP Global Fund/Health Implementation Support Team for review as early as possible in the negotiation process. The Legal Office (LO) and the UNDP Global Fund/Health Implementation Support Team will assist the Country Office (CO) with excluding or substantially limiting the conditions and ensuring that they are reasonable, that they comply with UNDP’s regulations, rules, policies and procedures, and that they are consistent with corporate practices between UNDP and the Global Fund. The negotiation process must be guided by the [SOPs on grant-making](#).

## Grant Confirmation: Limited Liability Clause

UNDP is often engaged to implement Global Fund grants in the most challenging operating environments, which are characterized by high security threats, civil unrest, political instability and/or armed conflicts. In cases where such volatile context may lead to the loss of funds and/or assets financed under the grant, the Executive Grant Management Committee of the Global Fund (EGMC) may approve a so-called “force majeure” or “limited liability” regime.

Such regime is introduced through a special condition in the Grant Confirmation on the following agreed terms:

- Possibility of suspension or termination of all programmatic activities by UNDP at any time if the country context so requires. The Country Office (CO) must consult the Global Fund beforehand.
- Regular reviews of the budget and performance framework (including the frequency and contents of reporting) with a view to adapting these documents to the volatile context. It is important that the CO proactively monitors programmatic performance, needs and expectations. If any changes must be made to account for the implementation challenges on the ground, such changes must be immediately communicated to the Global Fund.
- No liability for the loss or damage to any assets (including health products) and any Grant funds, provided that (i) UNDP has fully complied with the other terms and conditions of the Grant Agreement and has exercised due care and diligence, and (ii) UNDP has exercised all reasonable efforts to mitigate the risk of loss of assets and funds. Please note that the CO must not only demonstrate that both conditions are met but must also use its best efforts to seek and obtain recovery of any potential losses to the assets and funds.

The force majeure/limited liability regime usually begins to run on the day the force majeure situation presented itself (e.g. an armed conflict broke out) and expires one year following its incorporation into the Grant Agreement. It may be extended for an additional period (usually one year or the end of the grant) if the situation persists.

If the circumstances on the ground warrant the introduction of the limited liability clause, the following steps should be taken:

- The Programme Advisor, UNDP Global Fund/Health Implementation Support Team and the Legal Office must be immediately engaged by the CO to support the process.
- A request to introduce the force majeure/limited liability regime must be prepared by the CO for submission to the Global Fund's EGMC. The request must (i) set out the background; (ii) explain why the force majeure/limited liability regime is warranted; and (iii) include any relevant additional information. Since the request will likely be seen by UNDP's counterparts in the country, it is important that it is balanced, objective, well-supported, and accommodating of the sensitives on the ground.
- If the request is approved by EGMC, the terms of the limited liability clause will be negotiated between the Global Fund's Country Team and UNDP. While UNDP and the Global Fund have developed the standard language for the clause, some discreet modifications may be agreed to tailor it to the specific country context. The clause must be cleared by the Programme Advisor, Global Fund/Health Implementation Support Team, for programmatic issues and by the Legal Office for legal issues.
- The clause is introduced through an Implementation Letter during the grant implementation or through a Grant Confirmation for new grants.
- With the support of the Programme Advisor, Global Fund/Health Implementation Support Team and the Legal Office, it is imperative for the CO to engage with the Global Fund Country Team on matters such as:
  - Any changes to the performance framework and/or Budget that may be required due to the volatile country context. It is important that programmatic and financial needs are monitored proactively by the CO. Otherwise, UNDP may be called upon to perform and deliver on ambitious targets that are not adjusted to the force majeure situation.
  - The need to suspend and/or terminate programmatic activities in view of the force majeure situation.
  - Any loss of assets and/or funds due to the force majeure situation. Such losses must be immediately reported to the Fund, along with any necessary support and justifications. The CO must demonstrate that it not only mitigated the loss but also took measures to recover them. If this is not done, the Global Fund may refuse to waive UNDP's liability.
  - The need to extend the force majeure/limited liability clause for an additional period.



#### Practice Pointer

UNDP and the Global Fund have developed the process and standard terms for a force majeure/limited liability regime for cases where UNDP implements grants in high security contexts and where there is a threat of the loss of funds and/or assets for reasons beyond UNDP's control (e.g. looting of a warehouse). If the CO believes that such regime is warranted, please contact your Programme Advisor, Global Fund/Health Implementation Support team and the focal point for the portfolio in the Legal Office.

## Grant Confirmation: Schedule 1, Integrated Grant Description

The Integrated Grant Description uses a standard [template](#), in which details specific to the relevant grant are to be reflected. It sets forth, among other things, (a) background and rationale the programme; (b) goals; (d) strategies; (e) planned activities; and (c) target group/beneficiaries.

## Grant Confirmation: Schedule 1, Performance Framework

The performance framework (PF) is part of Schedule 1 of the [Grant Confirmation](#) and it is a legally binding document that sets forth the main objectives of the programme, organized into service delivery areas. It also outlines indicators with baselines and periodic targets, the periods for reporting, and the schedule of anticipated cash transfers and disbursement decisions. The indicators are selected primarily from the concept note and from the monitoring and evaluation (M&E) plan (if completed prior to signature of the Grant Agreement).

As part of the roll-out of its funding model, the Global Fund introduced [workplan tracking measures](#) (WPTMs). These are qualitative milestones and/or input and process measures with numeric targets that are used to track implementation of selected activities in the grant work plan. They are used during grant implementation to monitor activities under modules/interventions that cannot be assessed using quantitative coverage and outcome measures (for example, community systems strengthening (CSS), human rights, etc.). WPTMs are discussed and finalized between the country and the Global Fund at the time of grant negotiations, and included in the PF.

The Global Fund uses these indicators and WPTMs to monitor the programme's progress, grant a performance rating, and determine whether disbursements should be made. It also uses the indicators and corresponding targets to evaluate if the grant should be extended beyond the initial two-year period. Further guidance on selection of indicators and on WPTMs can be found in the [M&E section](#) of the Manual.

UNDP and the Global Fund have agreed on a format for an anticipated schedule of cash transfers and disbursement decisions, which can be found [here](#).



### Practice Pointer

The Country Office (CO) should negotiate the PF carefully and consider it to be as important as the budget. The importance of the selected indicators and targets cannot be underestimated, as they have a direct impact on the rating of the grant performance, and it is the performance of these indicators against the negotiated targets that will provide the basis for Global Fund disbursements and further funding decisions. The indicators and targets should be realistic and, among other things, fall within UNDP's control and be supported by adequate funding under the grant.

The PF should be reviewed and cleared by the UNDP Global Fund/Health Implementation Support Team.

## Grant Confirmation: Schedule 1, Summary Budget

The summary budget is part of the [Grant Confirmation](#). It is an Excel document, providing a snapshot of the detailed work plan and budget for the programme. It sets out the approved budget for the programme term, and is presented by module, cost grouping and recipients. For further guidance, please refer to the [financial management section](#) of the Manual.

## Implementation Letters and Management Letters

Following Grant Agreement signature, according to Art. 12 of the [Grant Regulations](#), “*The Global Fund and the Principal Recipient may from time to time issue jointly signed implementation letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement.*” Since implementation letters (ILs) are issued jointly by UNDP and the Global Fund, the UNDP Global Fund/Health Implementation Support Team and the Legal Office (LO) must review their terms and, in particular, ensure that they are consistent with the Grant Agreement.

The Global Fund may also, from time to time, issue management letters (MLs), which furnish additional information and guidance about matters stated in a Grant Agreement. They contain management action points for the Country Office (CO), which are considered as recommendations. Art. 12 confirms this by stating that management letters are “advisory in nature.” Since a management letter is a unilateral document, it has no binding legal force on UNDP. Nevertheless, it is sometimes understood as such by the Global Fund. The CO is therefore encouraged to seek LO's and the UNDP Global Fund/Health Implementation Support Team's guidance on the meaning and impact of management letters, as well as advice on handling the recommendations made by the Global Fund therein.

## Agreements with Sub-recipients

UNDP engages Sub-recipients (SRs) by entering into binding legal agreements with them (SR agreements). Depending on the type of SR, the appropriate template should be used (i.e. the template for a government entity (which is available in [English](#), [French](#) and [Spanish](#)) or the template for an intergovernmental organization (IGO) or a civil society organization (CSO) (which is also available in [English](#), [French](#) and [Spanish](#)). In 2013, UNDP released a model agreement for [United Nations SRs](#), which replaces the previous templates negotiated separately with each UN partner. The model agreement with United Nations SRs is based on the United Nations Development Group (UNDG) model UN agency to UN agency contribution agreement and is intended to introduce a more efficient framework of cooperation between UNDP and UN partners serving as SRs, while meeting the Global Fund requirements. Please contact the UNDP Global Fund/Health Implementation Support Team before signing an agreement with a UN agency.

A SR agreement is structured similarly to the [Grant Agreement](#). It is composed of a face sheet, standard terms and conditions, and several annexes.

A **face sheet** is similar to that of the Grant Agreement. The Country Office (CO) should carefully review it and make sure to complete all the blocks with correct information.

The **standard terms and conditions** (Grant Regulations) are non-negotiable and must be accepted by a SR without changes.

The Grant Regulations for IGOs, CSOs and government entities include the following key provisions:

- As a rule, UNDP undertakes procurement on behalf of SRs. (See Grant Regulations, Art. VII).
- SRs may be authorized to do procurement in exceptional cases, which must be set forth in the work plan (Id. Art. VII).
- There are several financing modalities available for funding SR activities: advance payment, cost reimbursement and direct payment. Direct payment can also be used in combination with advance payment and cost reimbursement (Id. Art. VIII).

- SR funds *and* income must be spent only on SR activities (Id. Art. VIII(6)).
- SRs must report other donor funds targeting similar activities or objectives (Id. Art. XXIX(7)).
- SRs have comprehensive programmatic and financial reporting obligations, which they must fulfill according to a specific schedule (Id. Art. XI).
- SRs must report any refund received from suppliers (Id. Art. XI).
- SRs' activities are audited and investigated by UNDP (Id. Art. XIII).

As noted above, Art. VIII of the Grant Regulations for IGOs, CSOs and government entities sets forth **three modalities for financing SR activities**: advanced disbursement (used when an SR has sufficient capacity to manage funds); cost reimbursement (used when an SR has sufficient resources to pre-finance activities), and direct payment (used when an SR has little capacity to manage funds or country-specific banking regulations prevent or complicate any other modality—in which case, UNDP pays directly to vendors and SR personnel). In addition to being a standalone financing modality, direct payment is also built into the advance disbursements and cost reimbursement modalities. This gives the CO the flexibility to decide whether a portion of funding should be advanced and a portion directly paid to vendors and SR personnel. Such flexibility allows UNDP to manage the risk accompanying advance disbursements while building SR capacity to manage funds. Further guidance on the modalities for financing SR activities is available in the **financial management section** of the Manual.

The SR agreement must be accompanied by a number of **annexes**, including a project document, a Grant Agreement and a work plan. These documents must be annexed to every SR agreement. The most important operational annex is a work plan, which is developed by the CO in consultation with the SR being engaged. The work plan should be consistent with the Grant Agreement and include (i) detailed activities and related costs/budget; (ii) outputs/deliverables; (iii) required supporting documentation showing delivery; (iv) indicators of performance; and (v) time frames for achievement of targets and deliverables.

The work plan must detail the **financing modality** that will be used to fund the SR activities. It should clearly outline which activities will be funded through **advanced disbursement**, **direct payment** and/or **cost reimbursement**.

Art. XVI of the Grant Regulations for IGOs, CSOs and government entities outlines detailed steps to be followed when circumstances warrant **early suspension and termination** of the SR agreement. Consultation with the SR in question, exchange of information, close collaboration on remedying the circumstances that interfere with continuation of activities, and gradual escalation are key to the process. Formal steps such as deadlines for notices and written notifications must be carefully observed. Since termination of SR relationships bears programmatic, legal and reputational risks, the UNDP Global Fund/Health Implementation Support Team and LO should be consulted on the process and approach.

When the SR agreement is coming to an end, because of either completion of SR activities or termination, the CO should prepare a **closure plan** and advise the SR of the following requirements in the Grant Regulations for IGOs/CSOs and government entities:

- Within one month of the end or termination of the SR agreement, the SR must return all assets funded by UNDP under the SR agreement. See Art. VII(6). Please note that it is very rare for the physical return of assets to occur. As a rule, the Global Fund authorizes the SR, such as the ministry of health, to retain the assets or instructs UNDP to arrange for the assets to be transferred to an incoming PR or another SR. Please see the **section on property issues** for further guidance on asset management.
- Within one month of the end or termination of the SR agreement, the SR must also return to UNDP all SR funds (where applicable) and income generated under the SR agreement. See Art. VII(6).
- Within two months of the end or termination of the SR agreement, the SR must provide a final report on SR activities and include a final financial report on the use of SR funds, as well as an inventory of assets funded by UNDP. See Art. XI (7).

If any deviations or additional terms (such as different reporting deadlines) are authorized, exceptionally, by the UNDP Legal Office (LO), they should be reflected in the Grant Regulations, which should be annexed separately to the SR agreement.

SR agreements can only be signed after a Grant Agreement is concluded. Before that, UNDP does not have a legal basis to enter into binding commitments with third parties. To avoid delays with implementation, SR agreements should be negotiated and made ready for signature before the Grant Agreement is concluded. As soon as that happens, signature of SR agreements should be immediate and automatic.

Two originals of SR agreements should be signed. After signature, UNDP keeps one original and provides the SR with the other original.



### Practice Pointer

Any substantive changes to the provisions in the corporate templates must be cleared by the UNDP Global Fund/Health Implementation Support Team for operational issues and by the LO for legal issues. Any approved deviations should be reflected in the Grant Regulations annexed to the SR agreement.

If the CO contemplates suspension or termination of the SR agreement, LO and the UNDP Global Fund/Health Implementation Support Team should be consulted on the process and approach.

## Agreements with Sub-sub-recipients

Sub-sub-recipients (SSRs) are Sub-recipients (SRs) of SRs. Engagement of SSRs carries high risks for UNDP, primarily because UNDP remains as fully accountable to the Global Fund for SSR activities as it is for SR activities, while having less control and oversight of them. Recent Office of Audit and Investigations (OAI) reports confirm that engagement and monitoring of SSRs remain a significant source of potential liability for UNDP. To minimize these risks, as well as to promote best practices, it is recommended that SSRs be engaged only in exceptional circumstances and that grant implementation activities be carried out by SRs or UNDP directly.

Where SSRs ought to be engaged, the SR in question must undertake a capacity assessment and select an SSR (or SSRs), based on the results of the assessment, in a transparent and documented manner. It must then obtain UNDP's written approval and clearance of each selected SSR. Each SSR agreement must be consistent with the terms of the SR agreement. This is the SR's responsibility and, while the CO may offer or agree to review the terms of the SSR agreement, such review should not rise to the level of approval of the SSR agreement, as this might create the impression that UNDP is a party to the SSR agreement, thereby increasing the risk for the organization.

Once the SSRs are engaged, UNDP must, at a minimum, make sure that the SR sets up adequate monitoring plans to oversee the activities of the SSRs.

Provision must be made to ensure that SSRs are audited at least once during the grant lifecycle. In the case of countries falling under the Global Fund's Additional Safeguard Policy, SSRs must be audited annually.

For specific legal requirements that must be met prior to the engagement of an SSR, please see Art. XXV of the Grant Regulations to [SR agreements](#) with [civil society organizations \(CSOs\)](#) and [government entities](#).

## Signing Legal Agreements and Requests for Disbursement

In accordance with the [UNDP Internal Control Framework](#), Grant Agreements, as well as all other legal instruments such as Sub-recipient (SR) agreements, contracts and related documents (e.g. amendments to the above), should be signed by a UNDP Resident Representative (RR). However, the latter may delegate his or her signature authority to other senior UNDP officials in the country, such as a Deputy Resident Representative (DRR) and/or a Country Director (CD). This ensures that, when a RR is away, decisions can be made without delay and UNDP operations can run uninterrupted.

The authorities delegated should be identified formally and in writing, and accepted both by the delegator and delegatee. The delegation should include the relevant sources of authority (e.g. the [Financial Regulations and Rules](#) and UNDP Programme and Operations Policies and Procedures (POPP)), the description of authorities being delegated, the effective date of delegation, and any specific limitations, such as restrictions on further delegation.

The Global Fund must be notified about the officials authorized to act on behalf of UNDP. This is done by listing UNDP authorized representatives in the face sheet to the Grant Agreement. In addition, the Country Office (CO) must submit to the Global Fund a standard [notification for signing legally binding agreements and/or requests for disbursements](#). Finally, the CO must fill out a contact information form, required by the Global Fund and available through the Global Fund's online Salesforce system.

UNDP and the Global Fund each keep a copy of the original signed Grant Agreement. However, since the delivery of original grant documents often takes time, an exchange of signed electronic copies usually takes place to effect conclusion of the Grant Agreement. As a rule, UNDP signs first and obtains in-country written acknowledgements from the Country Coordinating Mechanism (CCM) Chair and a civil society representative on the CCM. It then sends a signed copy to the Global Fund, along with a notification that the original grant documents are being sent.



### Practice Pointer

All legal instruments must be signed by an authorized representative of UNDP. The Global Fund must be notified in writing about the officials at the CO authorized to sign on behalf of UNDP. A standard [template](#) confirmation should be used for this purpose.

Once the Grant Agreement is signed, the CO should send a copy of it and the related project document to the Comptroller's Division, Bureau for Management Services (BMS), with a copy to the UNDP Global Fund/Health Implementation Support Team.

## Language of the Grant Agreement and other Legal Instruments

Grant Agreements and subsequent legal instruments concluded between UNDP and the Global Fund are always signed in English.

All other legal instruments should be signed in one of the three working languages—English, French or Spanish. A courtesy translation into another language can be enclosed but not signed. Where the local context and requirements are such that an agreement must be signed in some other language, this can be done only by way of exception. In such cases, the following final clause should be added to both the working and other language versions of the instrument in question:

*"IN WITNESS WHEREOF, the Parties, through their duly authorized representatives, signed this [insert designation of the instrument, e.g. Agreement, Contract, MoU, or Amendment] in English and [insert language] in two (2) originals in each language at the place and on the date set forth below. In the event of any ambiguity or conflict between the English and [insert language] language versions, the English version shall prevail."*

Such a provision can be added to the face sheet of the Sub-recipient agreement, before the signature block.

## Amending Legal Agreements

Amendments to legal agreements may become necessary in situations where such agreements must be changed at any point during grant implementation or extended to complete activities.

Amendments to the Grant Agreement are issued in the form of implementation letters. They must be cleared by the UNDP Legal Office (LO) for legal issues and by the UNDP Global Fund/Health Implementation Support Team for operational issues.

With regard to other legal instruments, such as Sub-recipient (SR) agreements or procurement contracts, clearance by LO and the UNDP Global Fund/Health Implementation Support Team is required only when substantive changes are introduced. Non-substantive changes, such as changes to the bank details or duration of activities, do not require clearance.

SR agreements may need to be amended by using a standard [template](#), in the following cases:

- SR activities are extended;
- SR agreement is renewed for another term under same Grant Agreement;
- work plan and budget are changed;
- any information on the face sheet is changed (e.g. bank details); or
- any standard terms are changed (e.g. financing modality changed from direct payment to advance disbursement).

Before introducing any amendments, the Country Office (CO) must ensure that the changes are consistent with the Grant Agreement.

Each amendment should be accompanied by the relevant revised document (e.g. an updated face sheet or a revised work plan and budget) and clearly state that the latter replaces the existing annexes.

## Other Legal and Implementation Considerations

### Property Issues

In accordance with the [Grant Regulations](#), UNDP retains ultimate responsibility for all assets acquired with grant funds, regardless of the actual entity undertaking the procurement (i.e. UNDP or, in exceptional cases, a Sub-recipient (SR)) and managing the assets. Hence, although SRs are accountable to UNDP for their own conduct, as well as for all acts and omissions of Sub-sub-recipients (SSRs), UNDP must proactively monitor SRs' processes, including their management of SSRs and asset management practices.

Asset procurement, management and handover are guided by the [UNDP Programme and Operations Policies and Procedures \(POPP\)](#) as agreed with the Global Fund. Further information can be found in the [financial management section](#) of the Manual.

### a. Transfer of assets from an outgoing Principal Recipient

Where UNDP is taking over the Principal Recipient (PR) function from another entity, the outgoing PR should prepare a transition plan covering aspects such as asset transfer. Ideally, UNDP should be consulted to ensure all assets to be transferred are correctly identified in the plan. However, there may be circumstances whereby the outgoing PR is unable or unwilling to consult with UNDP. In either case, UNDP should be proactive in planning the handover of PR responsibilities, including asset transfer, and engage with the Global Fund. Prior to UNDP accepting the transfer of assets from the out-going PR the Country Office (CO) should first consult with the UNDP Global Fund/Health Implementation Support Team.

It is important to ensure that the ultimate transfer is effected by the Global Fund, not by the outgoing PR, as UNDP should only be entering into agreements with the donor and the party to which it will be responsible. A standard [Transfer of Title from the Global Fund form](#) should be used to record the transfer from the Global Fund to UNDP.

Further information can be found in Section V of the [Guidance Note on Asset Management in the context of the Global Fund Grants](#).

### b. Procurement of assets for Sub-recipients

Where assets are procured by UNDP for use by an SR, the latter, in consultation with UNDP, must develop the specifications and/or terms of reference for those assets. Once these specifications and/or terms of reference are approved by UNDP, UNDP procures the assets in accordance with the [POPP](#), and makes all payments for them directly with grant funds to the selected contractor or contractors.

Once the assets are procured, UNDP as a PR retains responsibility for them. This means, for example, that where UNDP procures assets on behalf of a government SR and conditionally transfers title to those assets to that SR, UNDP must comply with Art. 19 of the Grant Regulations, which requires it to ensure that all assets are used for programme activities, unless specifically agreed otherwise with the Global Fund. If Art. 19 is violated, the Global Fund may request a refund from UNDP, in accordance with Art. 8 of the Grant Regulations.

Sections I-III of the [Guidance Note on Asset Management in the context of the Global Fund Grants](#) contain further information on the matter.

### c. Transfer of assets during grant implementation

Since UNDP is fully accountable for the assets produced with grant funds, during the project UNDP should retain ultimate ownership to all goods and other property financed by the Global Fund. During project implementation, all equipment and materials must be devoted to the programme. Assets may be handed over to the SRs by using one of the following modalities:

1. **Transfer of custody to government SRs.** Where an asset is procured by UNDP, and remains legally owned by UNDP, but is in use by the government SR, UNDP has established formal procedures to record the responsibilities of the custodian of the asset. A standard [Memorandum of Acceptance of Custody](#) should be signed prior to the handover of the asset to the government SR.
2. **Conditional transfer of title to government SRs.** In addition to the above, UNDP has established formal procedures for conditional transfer of title to assets to government SRs. A standard [Agreement of Conditional Transfer of Title](#) should be signed prior to the handover of the assets in question to the government SR.

As a general rule, neither custody of, nor title to, the assets should be transferred to civil society organizations serving as SRs. Where such transfer is necessary or desirable, the Legal Office (LO) and the UNDP Global Fund/Health Implementation Support Team should be consulted. Likewise, where further transfer of assets to SSRs appears necessary, advice of the LO and the UNDP Global Fund/Health Implementation Support Team should be sought.

The SR is responsible for the proper custody, maintenance and care of the assets transferred to them. UNDP policies require that SRs obtain appropriate insurance in amounts agreed upon with UNDP for the protection of such equipment and materials during implementation of the project. The cost of the insurance should be incorporated into the project budget.

The overall responsibility for use of the asset and reporting to the Global Fund, however, remains with UNDP.

Particular attention needs to be paid to the transfer of the custodianship of vehicles. For example, a vehicle that is not primarily in use by UNDP, should not use UNDP number plates or UNDP logo. In some countries, lack of availability of number plates has delayed asset transfer. In addition, in some countries there may be tax (including VAT) issues that are triggered by the transfer of custodianship. Thorough planning at the outset of the procurement, registration and custodianship should reveal the relative merits of the transfer and determine the best course of action. Asset management practices should follow guidance from [UNDP POPP](#).

### d. Asset handover at grant closure

At the end of the programme, UNDP transfers and/or disposes of the remaining property according to its rules and in consultation with the Global Fund (see Art. 19 of the [Grant Regulations](#)). Although the Global Fund's approval is not required for such transfer and/or disposal, it is considered best practice to seek its agreement, as well as the endorsement of the Country Coordinating Mechanism (CCM), Regional Coordinating Mechanism (RCM) or Regional Oversight Mechanism (ROM) (as the case may be), on the transfer of assets to the national SRs at the end of the programme. Further guidance is available in the [financial management section](#) of the Manual.

When a grant is approaching its end date, or the grant is transitioning to a different PR, UNDP must prepare a grant closure plan or transition plan (referred to here as “the plan”). The issues arising in either case (i.e. closure or transition) are very similar and the responsibilities of UNDP as PR are the same.

1. It is important for UNDP to proactively plan for the end of the grant. In this context, it is useful to engage with the relevant national programme even if a different entity will serve as PR under a new grant. The plan should include a comprehensive list of assets acquired under UNDP's Grant Agreement with the Global Fund, including their location, technical specifications, purchase value, actual conditions, and the guardian. Before submission to the Global Fund, the list of assets must be reconciled with the accounting records and a verification exercise completed.
2. The plan should also propose the steps for disposal of the assets. Particular consideration should be given to cases where local tax regulations impose a significant tax burden on a receiving entity to which assets are transferred. The plan should clearly outline the rationale for selecting the proposed recipients of the assets.
3. This plan will be reviewed by the Global Fund and must be approved by it **before** the assets can be transferred as described in the Plan.
4. Once the plan has been approved, UNDP should begin the process of formally transferring the assets to a SR or an incoming PR, in line with the [POPP](#) and in accordance with the standard [Agreement for Transfer of Title from UNDP](#).

Please refer to sections I–III of the [Guidance Note on Asset Management in the context of the Global Fund Grants](#) for further information on the matter.

## Logos and Other Markings

The UNDP name and emblem are protected by a General Assembly Resolution and reserved for the official purposes of the organization. Under no circumstances can they be used for commercial purposes or goodwill. Any authorized use should be consistent with UNDP's policies, including the 2011 [Policy on the UNDP Logo and Tagline Use](#).

Use of the Global Fund name and logo is subject to the terms set forth in the [Agreement to License Trademarks](#) (amended in 2016, see [here](#)) between the Global Fund and UNDP, which incorporate the [Global Fund Identity Guide for Partners](#) and must conform to certain specifications, explained below.

The following guidelines should be followed when using UNDP's and the Global Fund's name, emblem and other markings.

**Description of UNDP projects and programmes funded by the Global Fund.** All UNDP activities in the host country are carried out within the framework of projects of assistance to the government of that country. To reflect national ownership, the following description must therefore be used for all activities funded by the Global Fund: “*UNDP project in support of the Government of [insert name], funded by The Global Fund to Fight AIDS, Tuberculosis and Malaria.*” UNDP users should avoid designations such as “*UNDP/Global Fund project*” or “*UNDP/GF programme.*”

**Titles of UNDP staff members and project personnel.** UNDP staff members and project personnel are engaged by UNDP and not by the Global Fund. Hence, no reference to Global Fund should appear in their titles. For example, the correct title is *Project Manager, United Nations Development Programme*, as opposed to *UNDP/Global Fund Project Manager*.

**Designation of UNDP Country Offices and Project Management Units.** UNDP Country Offices (COs) and Project Management Units (PMUs) do not have any formal affiliation with the Global Fund. They are UNDP business units and their role is to implement UNDP projects funded by the Global Fund. Hence, the correct designation of a PMU is *Project Management Unit, United Nations Development Programme*, as opposed to *Project Management Unit, UNDP/Global Fund*.

### Communications materials

UNDP may use the Global Fund name or logo on general communications, marketing and event-related materials, such as on posters, signs, video/audio productions and at fundraising events in support of the Global Fund with the following guidance:

- It should be clear that the Global Fund did not directly produce the communications materials.
- UNDP's logo should be to the right the Global Fund's logo and should not be larger than the Global Fund's logo.
- The Global Fund's name may be spelled out in full – The Global Fund to Fight AIDS, Tuberculosis and Malaria — or simply as “The Global Fund.” **It is important not to use the initials “GFATM”**
- UNDP may use the Global Fund logo on the UNDP web site, however a link to the Global Fund's website should be included: [theglobalfund.org](http://theglobalfund.org).

**Disclaimer in communication materials.** Unless otherwise authorized by the Global Fund, with the exception of posters and signs, UNDP communication materials must contain the following disclaimer in a location reasonably positioned to give readers notice: “*The views described herein are the views of this institution, and do not represent the views or opinions of The Global Fund to Fight AIDS, Tuberculosis and Malaria, nor is there any approval or authorization of this material, express or implied, by The Global Fund to Fight AIDS, Tuberculosis and Malaria.*”

#### When NOT to use the Global Fund name/or logo

- UNDP should not use the Global Fund name or logo on locations or assets, such as a hospitals, mobile clinics and vehicles unless permission is given in writing by the Global Fund following clearance by the Global Fund.
- **Pharmaceutical or health products.** UNDP’s and the Global Fund’s names and logos cannot be used on any pharmaceutical or health products. Nor should they appear in close proximity so as to indicate sponsorship or endorsement of such products.
- The Global Fund’s name and logo cannot be used on UNDP’s stationary or any other material, including business cards, letterheads, notepads, pens, pencils, binders and others.
- **Sales, marketing, promotion and fund-raising.** The Global Fund’s name and logo cannot be used for any of these purposes (including on product packaging), unless written permission is obtained from the Global Fund.

**Use of the Global Fund’s name and logo by Sub-recipients.** UNDP may grant Sub-recipients (SRs) permission to use the Global Fund’s name and logo on the conditions set forth above, without the Global Fund’s formal permission. Alongside the reference to the Global Fund, a reference to UNDP and the United Nations must be included in all disclaimers in communication materials published by Sub-recipients. The said permission must be formalized through a sub-licensing agreement.

**Identification of assets by Sub-recipients.** SRs should identify all assets furnished or financed by UNDP with grant funds as UNDP’s property. For security reasons, UNDP may sometimes waive this requirement. More specifically, all vehicles procured for use by SRs should be subject to the same procedures as those developed for UNDP vehicles in consultation with the UNDP Security Team in the host country.

For further guidance on the use of the Global Fund’s name and logo, please consult the [Global Fund Identity Guide for Partners](#).

## Intellectual Property Rights and Disclosure of Information

Under UNDP’s Standard Basic Assistance Agreements (SBAAs) with governments, as well as Special Fund Agreements and Technical Assistance Agreements, all intellectual property rights deriving from activities under UNDP’s programmes vest in UNDP. Confidential information cannot be used without UNDP’s consent, except as specified in the [UNDP Information Disclosure Policy](#).

### Access to records and record retention

Pursuant to Art. 7(a) of the [Grant Regulations](#), UNDP is required to maintain adequate programme accounts, books, records and other documents relating to the programme, to show without limitation all costs incurred under the Grant Agreement and the overall progress towards completion of the programme. UNDP must maintain the books and records in accordance with its regulations, rules, policies and procedures consistent with the International Public Accounting Standards.

The UNDP retention period for accounting records is at least seven years after the date of the transaction (payment, recording date etc.). Hence, accounting records related to the programme should be retained for at least seven years.

However, the Global Fund has a right to request in writing to the UNDP Headquarters that a document is retained for a longer period in order to resolve any claims. In such a case, the UNDP Global Fund/Health Implementation Support Team will provide guidance to the Country Office (CO) on record retention.

A similar obligation is conferred on Sub-recipients (SRs). Each SR must keep accurate and current books and records, in addition to other documents regarding all expenditures incurred with UNDP funds, reflecting that all such expenditures are in accordance with the agreed work plan. The SR must maintain supporting documentation for each disbursement, including original invoices, bills and receipts.

Like UNDP, the SR must maintain all records and supporting documents for a period of at least seven years from the document date.



#### Practice Pointer

It is hard to overstate the importance of keeping and managing records pertaining to the use of grant funds. These records may be required for Local Fund Agent (LFA) verification, audits and investigations, grant closure, and other purposes. Failure to maintain good records may result in a substantial financial and legal exposure for UNDP. Proper care must be given to maintaining records for at least seven years from the document date, both at the CO and at the SR levels.

The Global Fund, either directly or through its LFA, may request certain supporting documents from the CO for the purpose of review and verification. Article 4.1 of the Framework Agreement provides that “...the Global Fund has the right to access non-UN Sub-recipient documents, including any supporting documents provided by non-UN Sub-recipients to UNDP, in line with UNDP guidance notes.” This primarily refers to the [Global Fund/LFA Access to Information during the Grant Life Cycle Guidance Note](#), advising on UNDP Principal Recipient (PR) interactions with the LFA.

The CO should cooperate with the LFA as much as possible. However, it is important to keep in mind that, under its regulations and in line with its guidance notes, **UNDP cannot share** the following documents and information:

1. Contracts for goods and services, long-term agreements or procurement documentation, including internal procurement review committee decisions, delivery notes signed with a UN agency, clearing documents or bills of lading;
2. Documentation that includes support documents for UNDP financial information, including:
  - a. invoices paid by UNDP or any other UN agency
  - b. cost estimates
  - c. quotations
  - d. payment vouchers or supplier invoices for UN
3. Contracts of employment and résumés/CVs, recruitment reports, results and competency assessments.
4. Attendance lists where workshop/training participants have signed for attendance allowance or per diems (paid by the UN).
5. Access to the Atlas system, including ‘view only’ access.
6. Other documents and information falling under the exceptions set forth in the [UNDP Information Disclosure Policy](#).

Any matters regarding the LFA are managed at the corporate level of the UNDP Global Fund/Health Implementation Support Team. The CO is advised to contact the Team if any issue arises.



#### Practice Pointer

UNDP may provide certain documents to the Global Fund upon request. However, each request must be reviewed to make sure that none of the exceptions to document access apply and UNDP regulations and guidance notes are fully observed.

## Conflict of Interest and Anti-corruption Measures

Art. 27 of the [Grant Regulations](#) requires UNDP to maintain standards of conduct that govern the performance of its staff, Sub-recipients and suppliers, including the prohibition of conflicts of interest and corrupt practices in connection with the award and administration of contracts, grants, or other benefits, as set forth in, inter alia, the [Staff Rules and Regulations of the United Nations](#), the relevant financial regulations and rules applicable to UNDP, the [anti-fraud policy](#), and the relevant [procurement policies and procedures](#).

In line with [UNDP Programme and Operations Policies and Procedures \(POPP\)](#), Art. 27 prohibits conflicts of interest and corrupt practices in connection with the award and administration of contracts, grants or other benefits.

It prohibits any person affiliated with the Principal Recipient (PR) (including staff, individual contractors, and counterpart government officials) from participating in the selection, award or administration of a contract, grant or other benefit or transaction funded by the grant, in which the person, members of the person’s immediate family or his or her business partners, or organizations controlled by or substantially involving such person, has or have a financial interest. Nor can persons affiliated with the PR participate in transactions involving organizations or entities with which that person is negotiating or has any arrangement concerning prospective employment.



## Practice Pointer

If the Country Office (CO) has knowledge or becomes aware of any actual, apparent or potential conflict between the financial interests of any person affiliated with the PR, the Country Coordinating Mechanism (CCM), the Local Fund Agent (LFA), or the Global Fund and that person's duties with respect to the implementation of the programme, the PR must immediately disclose the potential conflict of interest to the Global Fund. COs should also notify the UNDP Ethics Office and the Senior Programme Adviser of the Global Fund/Health Implementation Support Team.

Issues related to corruption should be referred to the UNDP Office of Audit and Investigations (OAI).

## Anti-terrorism Requirements

In accordance with Art. 3 of the [Grant Regulations](#), UNDP is required to use all reasonable efforts to ensure that grant funds are not used to support or promote violence, aid terrorists or fund terrorist-related activity or organizations known to support terrorism or that are involved in money-laundering activities. This includes ensuring that [Sub-recipient \(SR\) agreements](#) contain the same commitment from SRs.

UNDP will be required to cooperate, and to ensure that their SRs cooperate, with the Global Fund's review of compliance with these requirements. For each grant, the Global Fund will screen four key organizations and individuals against certain specified terrorist lists and, during implementation, the Local Fund Agent (LFA) will be required to certify to the Global Fund, on at least an annual basis, that it has conducted random, periodic reviews of PR's compliance with the obligation to ensure that each SR agreement contains the required SR certifications referred to above and to report its findings.



## Practice Pointer

Country Offices (COs) are advised to review the United Nations List of Terrorist Organizations at the earliest stages of SR assessments and regularly during grant implementation.

## Payment of Incentives to Government Staff

UNDP adheres to the policy of the Joint Consultative Group on Policy on contracting of government personnel, which **disallows direct payments to government staff for their additional work contributions on donor supported development projects**. This guidance should not be confused with the standard practice of hiring nationals as UNDP staff, management or technical expertise with UNDP.

UNDP may, however, engage in the following salary and payment supplementation schemes:

- **National Salary Supplementation Schemes (NSSS)** are schemes whereby UNDP is asked to engage on the salary supplements to civil service or other government-contracted posts covering direct state functions. Such schemes do not cover UNDP programme, operations or policy posts, which would be covered by standard UNDP project contracts and related procedures.
- **National Salary Payment Schemes (NSPS)** are schemes in a limited number of crisis and post-conflict country situations, where government is as yet unable to provide the required administrative or management support to ensure the payment of such salaries. UNDP may be requested to make these payments directly to the recipient on government contract.

UNDP would only engage in such schemes as part of a larger wage or civil service reform process (even in times of post-crises, such engagement would represent the initial stages of a longer-term reform strategy). A risk assessment should always be included in such engagement, with any direct service support provided for an agreed limited duration only, with an explicit and monitored exit strategy.

Engagement in NSSS and NSPS is driven by UNDP's national capacity development role and support. UNDP should not get engaged purely as a financial transfer mechanism to make direct salary payments to government officials.

Engagement in NSSS or NSPS requires the approval of the Office of the Administrator and Regional Bureau concerned. When such engagement is contemplated by the Country Office (CO), the UNDP Global Fund/Health Implementation Support Team should be consulted.

For more information on NSSS or NSPS, please refer to the [UNDP Programme and Operations Policies and Procedures \(POPP\)](#) guidance on personnel.

## Legal Framework for Other UNDP Support Roles

When UNDP is not named as Principal Recipient (PR), it may still be supporting capacity development of local entities through project planning and management, procurement and supply chain, finance, and human resources management. Below are examples of UNDP support beyond its PR role.

- 1. Support to the Country Coordinating Mechanism (CCM) as CCM funding recipient:** Since the CCM generally has no legal personality and, as such, has no capacity to enter into binding agreements, it sometimes designates UNDP as an entity responsible for receiving and managing funds to support certain administrative costs incurred by it. In such cases, the Global Fund concludes an agreement with UNDP, using the [standard terms and conditions for CCM Funding Agreement](#). The said standard terms and conditions also apply to regional coordinating mechanisms and steering committees. Please refer to the [financial management section](#) of the Manual for guidance on budgeting of CCM funds.
- 2. Support to the Global Fund constituencies as a constituency funding recipient:** This engagement is similar to the CCM funding. The Global Fund provides financial support to the Board constituencies (e.g. a delegation of the state represented on the Global Fund Board) for communication, meeting, travel and staff costs incurred for intra-constituency functions. In such cases, UNDP is sometimes designated as an entity responsible for receiving and managing funds to support these costs. A set of standard terms and conditions for such engagements is currently being developed. If the Country Office (CO) is approached by the Global Fund or the government counterpart in relation to such an engagement, please contact the UNDP Global Fund/Health Implementation Support Team for support with legal and programmatic arrangements.
- 3. Support to Principal Recipients:** In some cases, an entity acting as PR may engage UNDP to provide certain support services and help develop capacity in the areas falling under the Grant Agreement, including procurement, financial management, Sub-recipient (SR) management, and human resources, among others. In such cases, please contact the Legal Office (LO) and the UNDP Global Fund/Health Implementation Support Team for guidance on the legal and programmatic arrangements that must be put in place, including a project document, a cost-sharing agreement, and/or a memorandum for provision of services.
- 4. Support to governments:** In some cases, a governmental entity implementing health programmes financed by sources other than the Global Fund may engage UNDP to provide certain support services and help develop capacity in certain areas, primarily procurement. In such cases, please contact LO and the UNDP Global Fund/Health Implementation Support Team for guidance on the legal and programmatic arrangements that must be put in place, including a project document, a cost-sharing agreement, and/or a memorandum for provision of services.