Agreement between

the Norwegian Ministry of Foreign Affairs

and

the Government of the Republic of Malawi

and

Mulanje Mountain Conservation Trust

regarding

development cooperation concerning support to Mulanje Mountain Biodiversity Conservation Project

WHEREAS the Government of Republic of Malawi (Malawi) and the International Bank for Reconstruction and Development (the Bank) acting as an implementing agent of the Global Environment Facility (the GEF) have entered into an agreement dated July 9 2001, the Trust Fund Grant Agreement, in respect of grant fund provided by the GEF in an amount equivalent to US$5,300,000 for funding Mulanje Mountain Biodiversity Conservation Project (MMBCP),

WHEREAS the Mulanje Mountain Conservation Trust (MMCT) and the Bank acting as an implementing agent of the GEF have entered into an agreement dated July 9 2001, Project Agreement, setting forth obligations for MMCT towards the Bank regarding implementation of the MMBCP,

WHEREAS Malawi and MMCT entered into an agreement dated 2 August 2001, MMCT Subsidiary Agreement, setting forth conditions and terms for making available the proceeds of the GEF Trust Grant Funds to Mulanje Mountain Conservation Trust (MMCT),

WHEREAS Norway has supported the Environmental Sector in Malawi through Biodiversity Support Project dated 30 October 2001 and SADC wetlands conservation project, dated 29 June 2000,
WHEREAS Malawi through the MMCT in letter dated 31 August 2007 has requested the Ministry of Foreign Affairs (MFA) for support to the MMBCP, and

WHEREAS MFA has decided to comply with the request,

NOW THEREFORE MFA, Malawi and MMCT (the Parties) have reached the following understanding which shall constitute an Agreement between the Parties:

Article I Scope and objectives

1. This Agreement sets forth the terms and procedures for MFA’s support to Mulanje Mountain Biodiversity Conservation Project (the Project) as outlined in the Agreed Project Summary in Annex I and further described in the Project Document “Project Appraisal Document for Mulanje Mountain Biodiversity Conservation Project dated March 26, 2001, and supplementary document dated August 2007 for the planned period 2007 – 2012.

2. The Goal of the Project is.

Malawi’s main development objectives for the Mulanje massif, as for other key upland forest reserves in the country, is to maintain the vital watershed (headwater for nine rivers) and to benefit local communities by establishing sustainable management of the natural resources vital to Malawi’s economic growth and environmental protection through cooperation between the Forest Department, local authorities and communities.

3. The Objectives of the Project are.
   - Maintain Mulanje Mountain ecosystem, including globally significant biodiversity and vital ecological services,
   - Increase awareness, understanding and appreciation of the value of the Mulanje Mountain ecosystem, at local and national levels,
   - Improve sustainability of biological resource use and enhance the value of the MM ecosystem to local communities,
   - Establish long-term income stream and institutional capacity to ensure continuation of the above first objectives,
   - Demonstrate the appropriateness of Conservation Trust Fund as financing mechanism for biodiversity conservation.

4. The Project shall be implemented through two phases; an inception phase and an implementation phase. The purpose of having an inception phase is to allow time to establish structures and systems for the proposed public private partnership for the management of Mulanje Mountain Forest Reserve (MMFR), to develop a comprehensive management plan for the MMFR, to strengthen the capacity of the Forestry Department to manage the MMFR effectively.

5. The Parties may agree on extending existing Project into the implementation phase. Any such agreement shall be upon successful establishment of the proposed public private partnership and development of the management plan for the Forest Reserve.

Article II Cooperation – Representation

1. The Parties shall communicate and cooperate fully with the aim to ensure that the Goal and Objectives are successfully achieved. The Parties further agree to cooperate on preventing corruption within and through the Project, and undertake to take rapid legal action to stop, investigate and prosecute in accordance with applicable law any person suspected of misuse of
resources or corruption. The Parties shall immediately inform each other of any indication of corruption or misuse of resources related to the Project.

2. In matters pertaining to the implementation of the Project the Department of Forestry, and Mulanje Mountain Conservation Trust shall be competent to represent, Malawi and MMCT Board. The Norwegian Embassy in Lilongwe (the Embassy) is, as a part of MFA, competent to act on behalf of MFA. All communication to MFA in regard to the Agreement shall be directed to the Embassy.

**Article III Contribution of MFA**

1. MFA shall, make available to Malawi a financial grant not exceeding NOK 25,500,000.00 (Norwegian kroner Twenty Five Million and Five Hundred Thousand) (the Grant) to be used exclusively to finance the Project in the planned period 2007-12; the grant shall be released in two phases, NOK 5,500,000.00 to finance the inception phase, and NOK 20,000,000.00 to finance the implementation phase.

2. Any accrued interests on the Grant may be used for the benefit of the Project if agreed on by the Parties in writing.

3. Any unspent disbursed funds and accrued interests shall be returned to MFA upon completion of the Project.

**Article IV Contributions and obligations of Malawi**

Malawi through the Department of Forestry shall:

1. ensure that the Grant is used according to approved work plans and budgets and the conditions and terms set forth in MMCT Subsidiary Agreement dated 2 August 2001 and the Trust Fund Grant Agreement dated 9th July 2001,

2. ensure that Project funds, which shall include any accrued interests, are properly accounted for, and that the Grant is reflected in the plans, budgets and accounting of Malawi,

3. promptly inform MFA of any circumstances that interfere or threaten to interfere with the successful implementation of the Project,

4. defray any customs duties, sales taxes and other taxes, fees and levies on all equipment, materials and supplies financed by the Grant and imported into Malawi for the benefit of the Project,

5. ensure that all permits, import licenses and foreign exchange permissions that may be required are granted,

6. ensure that representatives of Norway are permitted to visit any part of the Project for purposes related to the Agreement and examine any relevant records, goods and documents.

**Article V Contributions and obligations of Mulanje Mountain Conservation Trust**

The MMCT as implementing agency shall be responsible for implementing the Project, and shall hereunder:

1. Have the overall responsibility for the planning, implementation, reporting and monitoring of the Project,
2. ensure that the Grant is used according to approved work plans and budgets and the conditions and terms set forth in the MMCT Subsidiary Agreement dated 2 August 2001, Project Agreement dated 9 July 2001 and the Trust Fund Grant Agreement dated 9 July 2001,

3. ensure that Project funds, which shall include any accrued interests, are properly accounted for, and that the Grant is reflected in the plans, budgets and accounting of MMCT,

4. promptly inform MFA of any circumstances that interfere or threaten to interfere with the successful implementation of the Project,

5. ensure that representatives of Norway are permitted to visit any part of the Project for purposes related to the Agreement and examine any relevant records, goods and documents.

Article VI Disbursements

1. The Grant will be disbursed upon semi-annual written requests from MMCT based on financial needs of the Project and, except the first request, on approved work plans and budgets. The First disbursement, amounting to NOK 5,500,000 to finance the inception phase will be made upon signing of this agreement and approval by MFA of a disbursement request.

MMCT shall take into account unspent disbursed amounts and income from all sources as well as any accrued interests when determining the amount to be requested for subsequent disbursements to the Project.

Along with the requests, except the first request, MMCT shall state the cash balance of the Project and shall submit statements of cash and bank balances from the Project's accounting records.

2. Funds will be transferred upon MFA’s approval of the requests to a separate bank account with MMCT and shall be made available to the Project immediately.

MMCT shall immediately, in writing, acknowledge receipt of the funds. The date of receipt shall be stated as well as the exchange rate applied.

3. All disbursements to suppliers of goods or services shall be made by MMCT.

4. MFA may in exceptional cases and if considered necessary for the progress of the Project, upon request from MMCT, effect disbursements directly to suppliers for procurement costs incurred under contracts entered into by MMCT. Such disbursements will only be made against requests accompanied by:

- a copy of the contract (if applicable),
- original and specified invoice from the supplier (including enclosures to such invoice)
- and
- a written approval of the invoices by the chief financial officer of MMCT.

Article VII Annual Consultations

1. MFA shall participate in the Bank supervision missions in June every year in order to:

- Discuss the progress of the Project, including results and fulfillment of agreed obligations,
- discuss and, if feasible, approve work plans and budgets for the following year
- discuss issues of special concern for the implementation of the Project, such as the major risk factors set out in the Agreed Project Summary in Annex 1,
and how to manage such risks/issues.

- Each of the Parties may include others to participate as observers or as advisors to their delegations.

2. The documentation specified in Articles VIII and X shall form the basis for the consultations.

3. The supervision missions shall be called and chaired by the Bank.

4. Main issues discussed and points of view expressed as well as any decisions shall be recorded in Aide Memoir. The Aide Memoir shall be drafted jointly by all parties.

**Article VIII Reports**

1. MMCT shall submit to MFA the reports and documentation specified below. MFA shall respond within four weeks upon receipt of the reports and documentation.

2. **Annual Progress reports** shall be submitted six weeks before the supervision mission.

   The progress reports shall be prepared in accordance with existing MMCT the format, and shall among other things include the following information:

   - A description of actual outputs compared to planned outputs (as defined in the work plans),
   - a brief summary of the use of funds compared to budget,
   - an assessment of the efficiency of the Project (how efficiently resources/inputs are converted into outputs),
   - an explanation of major deviations from plans,
   - an assessment of problems and risks (internal or external to the Project) that may affect the success of the Project,
   - an assessment of the need for adjustments to activity plans and/or inputs and outputs, including actions for risk mitigation,
   - a brief assessment of achievements in relation to Purpose.

3. Financial statements shall be submitted six weeks prior to the supervision mission:

   a. Financial statements shall be prepared following the Bank format and shall also consist of:

   i) A statement showing cash receipts/income and expenditures for the previous period structured as and compared to approved budgets for such previous period. The statement shall capture all sources of funding, with sufficient segregation of data to permit identification of individual sources of funds and disbursements on major Project activities or types of expenditure,

   ii) a statement of cash and bank balances,

   iii) relevant notes to the above mentioned statements including a description of the accounting policies used and any other explanatory material necessary for transparent financial reporting of the Project.

4. A final report shall be submitted within six months after the completion of the Project. If the Project is not completed by the agreed completion date, a status report shall be submitted to MFA six weeks before the completion date. The final report shall include:

   - The topics listed in Clause 2 above for the whole Agreement period,
an assessment of the effectiveness of the Project, i.e. the extent to which the Purpose has been achieved,
- an assessment of impact (if possible), i.e. the changes and effects positive or negative, planned and unforeseen of the Project seen in relation to target groups and others who are affected,
- an assessment of sustainability of the Project, i.e. an assessment of the extent to which the positive effects of the Project will still continue after the external assistance has been concluded,
- a summary of main “lessons learned”.

**Article IX Procurement**

1. MMCT undertakes to effect all procurements of goods and services necessary for the implementation of the Project.

2. The procurements shall be performed in accordance with the Banks Guidelines for Procurement and Schedule II of the Project Agreement between the Bank and MMCT dated July 9 2001. Norwegian suppliers shall be given the same opportunities as other suppliers to compete for deliveries.

   MMCT shall observe the highest ethic standards during the procurement and execution of contracts, and Malawi shall ensure in its national legislation adequate and effective means to punish and prevent illegal or corrupt practices.

   No offer, gift, payment or benefit of any kind, which would or could, either directly or indirectly, be construed as an illegal or corrupt practice, e.g. as an inducement or reward for the award or execution of procurement contracts, shall be accepted. Invitations to make offers as well as the procurement contracts shall, respectively, include a clause stating that the offer will be rejected and/or the contract cancelled, in case any illegal or corrupt practices have taken place in connection with the award or the execution of the contract.

3. MMCT shall upon request furnish MFA with all relevant information on its procurement practices and actions taken, and provide access to all related records and documents. MFA may require access to information even during the stage in the procurement procedure when it is restricted to the officers performing the procurement. Restrictions on such information shall be respected until the information can be made public without any risk of detriment to the result of the procurement.

**Article X Audit**

1. The audit shall be performed by an independent professional accountant/accountancy firm in public practice (external auditor/ audit firm) acceptable to MFA.

   The cost of the audit shall be covered by the Grant.

2. The audit shall be carried out in accordance with international auditing standards acceptable to the Bank. The auditor shall state in the report which auditing standards that have been applied.

3. The audit report shall state the auditor’s opinion/findings as to:
   - Whether the financial statements present fairly, in all material respects, the Project’s cash receipts/income and expenditures as well as the cash/bank/financial position in accordance with an acceptable financial reporting framework,
   - whether the audit has uncovered any material weaknesses in relevant internal control(s),
   - whether the audit has uncovered any illegal or corrupt practices,
   - whether funds have been used exclusively to cover Project expenditures,
   - whether cash receipts/income and expenditures are properly accounted for.
whether the Grant is reflected in the budgets and accounting of MMCT and Government
whether appropriate internal controls to counteract illegal or corrupt practices have been established and are complied with.

4. MMCT shall submit to MFA the audit report and any other report from the auditor significant to the implementation of the Project six months after the fiscal year. MMCT shall comment upon the auditor's findings. MFA shall respond within four weeks upon reception of the report.

Article XI Reviews – Evaluation

1. A review of the inception phase shall be carried out eight weeks before completion of the inception phase in order assess the extent to which the Purpose has been achieved, especially focusing on establishment and functioning of the proposed public private partnership model.

2. Subject to approval by MFA of the inception phase and continuation into the implementation phase, a mid term review and end of Project review focussing on progress to date and the effectiveness of the Project, shall be carried out halfway through the Project and six month before the end of the Project respectively. An assessment of the Project's impact may also be included in the review(s).

3. The cost of the review(s) shall be covered by the Grant.

4. MFA reserves the right to carry out independent reviews or evaluations of the Project as and when MFA deems it necessary. The cost for such reviews will be covered by funds over and above the Grant.

Article XII Reservations

1. MFA reserves the right to withhold disbursements at any time in case e.g.:

   • The Project develops unfavorably in relation to the Goal and Purpose,
   • substantial deviations from agreed plans or budgets occur,
   • the documentation specified in Articles VIII and X has not been submitted as agreed,
   • the financial management of the Project has not been satisfactory,

2. MFA reserves the right to reclaim all or parts of the Grant and cancel the Agreement if Project funds are found not to have been used in accordance with the Agreement or are found not to be satisfactorily accounted for.

3. MFA has the right to cancel the Agreement or portion of the Agreement, and has the right to demand the cancellation of any contract financed under the Agreement, with immediate effect if it determines that corrupt or fraudulent practices were engaged in by representatives of MMCT or by a beneficiary of Project funds during procurement or execution of the contract without MMCT having taken timely and appropriate action satisfactory to MFA to remedy the situation.

4. Before MFA withholds disbursements, reclaims funds or cancels the Agreement, the Parties shall consult with a view to reaching a solution in the matter.

Annex XIII Distribution of the Agreement

The Parties shall distribute copies of the Agreement to the respective ministries, authorities and other institutions involved in the Project or otherwise in need of information on its content.
Article XIV  Entry into force – Termination – Disputes

1. The Agreement shall enter into force on the date of its signature, and shall remain in force until the Parties have fulfilled all obligations arising from it. Whether the obligations are fulfilled, shall be determined in consultations by the Parties.

2. Notwithstanding the previous clause each Party may terminate the Agreement upon three months written notice.

3. If any dispute arises relating to the implementation or interpretation of the Agreement, the Parties shall consult with a view to reaching a solution.

IN WITNESS WHEREOF the undersigned, acting on behalf of their respective organisations, have signed the Agreement in two originals in the English language.

Done in Lilongwe the 20th day of NOV of 2007

For the Norwegian Ministry of Foreign Affairs
Gunnar Foreland
Ambassador

For Mulanje Mountain Conservation Trust
CARL BRUSSOW
MMCT Executive Director

For the Government of Malawi
DENNIS KAYAMBAZINTHI
Forestry Dept. Director

Annexes:
1. Agreed Project Summary
Annex I  Agreed Project Summary

Identification of the Project
Project Title/Name: Support to Mulanje Mountain Biodiversity Conservation
Project (MWI-07/010)
Implementing institution: Mulanje Mountain Conservation Trust in collaboration with the Department of Forestry

Description of the Project
Mulanje Mountain has diverse and rich ecosystem, which is home to a wide range of organisms. It is also a catchment of headwaters and a source of many perennial rivers and streams. However, the mountain resources are threatened by densely populated communities which heavily depend on mountain’s natural resource base for a living.

In order to check the alarming rate of deforestation and loss of biodiversity on the mountain the MMCT developed and submitted to the GEF a biodiversity project Mulanje Mountain Biodiversity Conservation Project (MMBCP). The Project has five major components; i) Trust Administration, ii) Biodiversity Conservation, Research and Monitoring, iii) Environmental education, iv) Forest Co-management and Sustainable Livelihoods, and v) Conservation Trust Fund. The MMCT Fund was then established as the financing mechanism for the above mentioned Project components.

Goals and objectives
The government's main development objectives for the Mulanje massif, as for other key upland forest reserves in the country, is to maintain the vital watershed (headwater for nine rivers) and to benefit local communities by establishing sustainable management of the natural resources vital to Malawi's economic growth and environmental protection through cooperation between the Forest Department, local authorities and communities. Specific objectives of the MMCBP include:

- Maintain Mulanje Mountain ecosystem, including globally significant biodiversity and vital ecological services,
- Increase awareness, understanding and appreciation of the value of the Mulanje Mountain ecosystem, at local and national levels,
- Improve sustainability of biological resource use and enhance the value of the MM ecosystem to local communities,
- Establish long-term income stream and institutional capacity to ensure continuation of the above first objectives,
- Demonstrate the appropriateness of Conservation Trust Fund as financing mechanism for biodiversity conservation.

Outputs
Progress toward this objective is being measured and monitored in terms of:
- increased awareness, understanding and appreciation of the importance of environmental management in general, and of biodiversity conservation in particular, particularly within FD and among local communities;
- reversal of the trend of degradation and loss of globally significant biodiversity in the Mulanje Mountain ecosystem, determined through ecological/biodiversity monitoring program;
- contribution to the implementation of the Reserve Management Plan, focusing on the biodiversity conservation aspects;
- a decrease in the incidence and levels of activities and events which represent important threats to the area's biodiversity;
- implementation of specific conservation actions (e.g., firebreak maintenance, removal of invasive exotic vegetation), carried out to the extent possible by local communities;
- participation by local communities in co-management of the Forest Reserve, and implementation and success of co-management pilot projects;
- successful establishment and use of a Trust Fund to support conservation activities over the long term, with effective participation of key stakeholders and a positive reputation at local, national and international levels; and
- success in raising funds to increase the endowment and/or operational resources of the MMCT.

Inputs
For the Project outputs to be fully achieved purpose equipment in form of vehicles, computers, biodiversity assessment facilities (e.g. GPS) will be required. In addition the Forestry Department and MMCT will require logistic support in form of communication.

Biodiversity conservation covers a wide range of organisms and topics and as such will require a broad range of expertise. The Project will therefore rely on technical support from other stakeholders such as the University of Malawi, National Herbarium and Botanic Gardens of Malawi, The Museums of Malawi, and Forestry Research Institute of Malawi.

The overall budget over a period of five years is estimated to be 49.5 MNOK. It is expected that Norway will provide 25.5 MNOK and the rest will be provided by other donors such as USAID. The Norwegian will be released in two phases, 5.5 MNOK to finance the inception phase (2007-8 activities) and 20 MNOK to cover the implementation period from 2008-12.

Main indicators

<table>
<thead>
<tr>
<th>Global Objective:</th>
<th>Outcome / Impact Indicators:</th>
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<tbody>
<tr>
<td>1) Maintain Mulanje Mountain ecosystem, including globally significant biodiversity and vital ecological services.</td>
<td>- Biodiversity conservation aspects of MMFR Mgmt. Plan under implementation</td>
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<tr>
<td>2) Increase awareness, understanding and appreciation of the value of the Mulanje Mountain ecosystem, at local and national levels</td>
<td>- Ecosystem of MMFR maintained in good condition</td>
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<td></td>
<td>- Community knowledge and appreciation increased;</td>
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<tr>
<td></td>
<td>- Decrease in FD/Community conflict relating to Reserve access and use</td>
</tr>
<tr>
<td></td>
<td>- Allocation of funds for Reserve management (through Forest Fund and other mechanisms., e.g., water users tax)</td>
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</table>
3) Improve sustainability of biological resource use and enhance the value of the MM ecosystem to local communities

4) Establish long-term income stream and institutional capacity to ensure continuation of 1-3;
   MMCT appreciated and respected by stakeholders at local, national and international levels
   Demonstrate the appropriateness of Conservation Trust Fund as financing mechanism for biodiversity Conservation

- Proportion of MMFR resources under co-management
- Effective biodiversity conservation program maintained over time in the face of changing circumstances
- Local stakeholders’ aware of and positive towards MMCT and its objectives
- Contributions to the MMCT (operating costs and/or endowment)
- MMCT cited as positive example and model by GEF and other conservation supporters

3.0 Major risk factors (internal and external)
The primary risks to project achievement are inadequate cooperation from the Forestry Department, the prevalence of corruption, and conflict with the mountain’s neighbouring communities. An additional risk is the impact of the urban demand for resources upon MMFR with the recent development of good quality access roads in the area.

The proposed public private partnership management arrangement is being developed chiefly to improve management of MMFR. The improvements being sought with this stronger FD cooperation are a comprehensive planning and reporting system, efficient supervision of management interventions on the MMFR, management being effected by professional and motivated staff, the application of effective law enforcement against illegal activities, and the incorporation of more diverse resource management expertise. The approach therefore will address most of the anticipated risks.

4.0 Overall tentative budget
The over budget over a period of five years is estimated to be approximately 49.46 MNOK (about US$ 8 244 068). It is envisaged that a contribution of NOK 25,500 000 provided over a period of five years for MMCT activities may result in reduced or zero draw-downs. This will enable MMCT to reinvest all annual income from the endowment. This in the end will enable MMCT to grow the capital to a level (currently estimated to be US$ 8,346 668) that can generate the estimated ideal MMCT annual budget of US$ 450 000. In this connection Norway will provide NOK 25 500 000 (representing 50% of the total budget) to finance MMCT activities for the period from 2007 to 2012. It is expected that the balance will be financed through other sources such as USAID, the EU etc. A summary of Norway’s contribution to the MMCT activities is presented in the table below.

Total MMCT Five Budget (2007 – 2012)

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<th>Line Item</th>
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<th>2010-11</th>
<th>2011-12</th>
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<td>2201400</td>
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<th>Line Item</th>
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<th>2010-11</th>
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Tentative breakdown of Norwegian contribution to the MMCT Five Year Budget