



African Population and
Health Research Center

PARTNER AGREEMENT GENERAL TERMS AND CONDITIONS

I. USE OF THE FUNDS

- a) The Partner shall not be permitted to use the funding allocated under this Agreement other than in accordance with the Project Budget.
- b) Any deviation from the agreed Project Budget must have prior written approval from APHRC.
- c) Where APHRC has provided non-cash items under the Project, the Partner shall be responsible for their safety and security, and for ensuring they are applied towards their intended use.
- d) If there are reasonable grounds to suspect that any irregularities, misappropriation, or misuse of funds has occurred during or after the period of the Project and the Partner fails to justify the cost with sufficient explanation and documentary evidence as determined by APHRC (as the case may be), the Partner must refund that amount to APHRC immediately.
- e) Funds disbursed under this Agreement must be held in accordance with the Donor Conditions. Any interest accrued on the funds disbursed under this Agreement or any income accrued or received as part of the Project activities should be properly reflected by the Partner in its books of account and financial reports. Unless otherwise stated in the Donor Conditions, the interest and/or income amounts shall be used for the project.

2. PAYMENT

- a) The instalment(s) will be disbursed by APHRC according to the payment method agreed by both parties.
- b) These disbursements shall be contingent on access of funding by APHRC from the main donor, with whom APHRC has a funding agreement. In the event that the main donor is unable or ceases to provide the funding to APHRC, APHRC shall not be obligated to provide funding to the Partner.
- c) APHRC reserves the right to withhold the whole amount or amount of any instalment(s) otherwise due to the Partner (including off-setting against any payments due to APHRC) for any of the following reasons:
 - i. pending submission of satisfactory activity and financial reports by the Partner or satisfactory response by the Partner on adverse findings of APHRC following an inspection/review/audit; or
 - ii. under or over utilisation of funds as per financial report.
- d) If any such withholding or variation of instalment(s) is required by APHRC, it shall be notified to the Partner in writing.



African Population and
Health Research Center

3. RESPONSIBILITIES OF THE PARTIES

a) The Partner will:

- i. be responsible to comply with all the laws of the country of implementation;
- ii. follow the Donor Conditions, as may be notified to the Partner by APHRC from time to time, whether during the term of the Project or anytime thereafter should any requirement continue following the conclusion of the Project;
- iii. not enter into any sub-grants or sub-contracts using Project funds without the prior written approval of APHRC;
- iv. contribute to the implementation of the project by undertaking the responsibilities allocated to it in this Agreement, in full cooperation with APHRC, and in accordance with the budget, schedule, and other details set out in the Workplan.

b) APHRC will:

- i. provide overall guidance, oversight, technical assistance and leadership, as appropriate, for the implementation of the project and avail itself for consultations as reasonably requested;
- ii. disburse funds in the manner described in this Agreement;
- iii. carry out a project inception workshop with Partner staff and other stakeholders covering the Project arrangements, including those set out in this Agreement and annexes;
- iv. ensure that it provides to the Partner timely notification of any amendments or variations in the Donor Conditions;
- v. support the implementation of the Project by providing (where requested by the Partner and as agreed by the parties) capacity strengthening support.

4. REPORTS

- a) All the Partner's reports are to be written in English unless APHRC agrees they can be written in another language.
- b) The Partner agrees to make all reasonable modifications and corrections to a report within Fifteen (15) days of APHRC's request unless otherwise specified in the Specific terms and conditions.



**African Population and
Health Research Center**

- c) The Partner shall keep an up-to-date asset register for all purchased equipment under the Project. The Partner will submit the asset register to APHRC on request and with the final narrative and financial report.
- d) Each party agrees it will notify in writing the other as soon as possible of any significant change in the Project or any difficulty or delay (including a safety or security incident) which might significantly affect adherence to the proposed time schedule and/or the execution of the Project. When notifying the other party a statement of the action taken or contemplated and any assistance needed to resolve the problem should be included.

5. REVIEW, MONITORING AND EVALUATION

- a) Where applicable, APHRC and the Partner will jointly design monitoring and evaluation plans, including the development of impact indicators for the Project, and will work together in supporting the carrying out of evaluations.
- b) The Partner shall facilitate any visits by APHRC, the Donor, or their appointed representatives in connection with the Project. The dates of the visits shall be jointly agreed by both parties.
- c) APHRC shall ensure its program and finance staff undertake field visits according to a schedule agreed with the Partner. APHRC commits itself to deliver its observations to the Partner in writing on the programmatic, administrative and accounting systems and procedures of the Project.
- d) The Partner and APHRC shall hold regular coordination meetings as agreed upon from time to time. Parties at co-ordination meetings may mutually review and share feedback, lessons learnt, achievements and ways of working. All outcomes at these meetings shall be recorded in writing and shared with both Parties.

6. FINANCIAL RECORDS AND AUDITS

- a) The Partner agrees to keep separate financial records so that the payments and expenditures made under this Agreement can be easily identified. The financial records must be accurate, up to date and include all relevant supporting documents.
- b) The Partner agrees to maintain original books of account and other financial records for 7 years (or longer if specified in the Donor Conditions) after the expiration or earlier termination of this agreement. The Partner may request that all financial records be passed to APHRC for retention for the required period with written approval of both parties.
- c) With prior notice, the Partner agrees to cooperate with (during the term of this Agreement and for 7 years thereafter) APHRC, or any person authorised by APHRC, in any audit or review of books of account and other financial records relevant to this Agreement, and in any other reasonable examinations or investigations into Project activities.
- d) The Partner agrees to:



**African Population and
Health Research Center**

- i. implement any agreed recommendations arising from an audit carried out under this Clause 6 within any agreed timeframe; and
- ii. provide copies of its annual audited financial statements reflecting the funds received under this Agreement.

7. PROCUREMENT

- a) All procurement must be carried out under the principles of best value for money, transparency, accountability, and fair competition and equal treatment of suppliers.
- b) The Partner shall be responsible for the care, security, maintenance and physical inventory of the Property.
- c) The Partner, unless self-insured, shall maintain insurance for the project Property. Upon request, the Partner shall produce documentary evidence of such insurance including self-insurance.
- d) In cases of damage, theft or other losses of the Property, the Partner shall provide APHRC with a comprehensive report, including a police report, where appropriate, and any other evidence giving full details of the events leading to the loss of the Property.
- e) If any necessary and supporting documentation is not properly maintained and available for review, or is lost or prematurely destroyed, APHRC may stop any further payment under the Agreement. In addition, APHRC may ask for a refund of amounts not covered by supporting documentation or in the case of Property not covered by an inventory report and the Partner shall pay such amount within thirty (30) calendar days of receipt of the refund request from APHRC.
- f) Where the Donor Conditions for the procurement of goods and services are more stringent than the guidelines specified above, the Donor Conditions will prevail.

8. LIABILITY, INDEMNIFICATION, INSURANCE AND TAXES

- a) APHRC shall not, in any circumstances or for any reason, be responsible or held liable for:
 - i. loss or damage sustained or caused in the course of implementing the Project by the Partner's personnel, vendors, agents, partners, sub-contractors and associates;
 - ii. any third party claims, losses and expenses that may arise from the Partner's negligence, recklessness or intentional act or omission that is related to or in connection with this Agreement;
 - iii. compensation for the death, disability, or other hazards which may be suffered by the personnel, vendors, agents or other representatives of Partner arising from Partner's performance in connection with this Agreement; and



**African Population and
Health Research Center**

- iv. the safety and security of the Partner or its employees, consultants, volunteers or other representatives.
- b) In the case that APHRC is held liable for any default of the Partner, the Partner undertakes to indemnify APHRC against such liabilities from its own resources.
- c) The Partner shall take out and maintain insurance policies as may be reasonable and prudent in the context of the Project with reputable insurers during the agreed and extended duration of the Project.
- d) The Partner shall be liable for all taxes arising out of payments made under this Agreement.

9. FRAUD, BRIBERY AND CORRUPTION

- a) The Partner shall ensure that all assets, funds and resources associated with the Project are protected from all fraud, corruption, loss, misappropriation or misuse.
- b) The Partner shall recognise and abide by APHRC's zero tolerance approach towards fraud, bribery and corrupt practices and shall fully comply with all applicable laws, statutes, regulations and codes relating to bribery and corruption.
- c) The Partner shall notify APHRC immediately upon becoming aware of detected, suspected, or attempted fraud, bribery or corruption and will investigate and take action against any fraud, bribery or corruption which affects this Project.
- d) The Partner warrants that neither the Partner nor any of its personnel, agents, partners, sub-contractors, suppliers/vendors and associates connected with the Project:
 - i. has given or accepted, or offered or agreed to give or accept any payment, gift or other benefit (i.e. a bribe) to induce someone to enter into a contract or otherwise to act improperly or to reward them for having done so;
 - ii. shall give or accept, or offer or agree to give or accept any payment, gift or other benefit (i.e. a bribe) to induce someone to enter into a contract or otherwise to act improperly or to reward them for having done so.
 - iii. neither the Partner nor its personnel, agents, partners, sub-contractors, suppliers/vendors and associates shall accept for their own benefit any trade commission, discount or similar payment or benefit in connection with this Agreement.

10. TERRORISM AND PROHIBITED PARTIES

- a) The Partner shall not engage in any financial transaction or other dealing with a prohibited party (i.e. an individual or entity that is proscribed or designated on an official government, EU or UN list because it is directly or indirectly involved in terrorism activities or activity on behalf of a sanctioned country) ("Prohibited Party") in connection with this Agreement.



African Population and
Health Research Center

- b) The Partner shall inform APHRC immediately if, during the course of this Agreement, it becomes aware of any link whatsoever between the Partner and any organisation or individual who may be perceived to be linked in any way to terrorism or who appears on any sanctions list, including but not limited to any detected, suspected or attempted:
 - i. financial transaction or other dealing with a Prohibited Party or a terrorist group; and
 - ii. diversion of Project assets, funds or resources to a Prohibited Party or a terrorist group.

I I. WHISTLEBLOWING

APHRC shall hear, respect and act appropriately upon any reports by Partner staff or third parties of serious malpractice by the Partner (including any suspicion of fraud) or for which APHRC is responsible in accordance with APHRC's Whistleblowing Policy <https://aphrc.org/wp-content/uploads/2020/10/HR-Downloads20190130085347Whistle-Blowing-Policy-Nov-2018.pdf> .

I 2. SAFEGUARDING

- a) The Partner shall ensure that this Agreement shall be performed with all due care and diligence by personnel who are appropriately qualified to deliver the project.
- b) The Partner shall ensure that they and their staff will keep up to date with the APHRC Safeguarding Policy and best practice. In the event of an allegation being made against the Partner, being unaware of the Policy will not constitute a suitable defense. <https://aphrc.org/wp-content/uploads/2020/10/HR-Downloads20200820092937APHRC-Safeguarding-Policy-Reviewed-25-May-2020-final.pdf>

I 3. PUBLICITY AND VISIBILITY

- a) Instructions on the use of APHRC and the Donor's name and logo shall be obtained from APHRC and any use of such name and logo shall be approved by APHRC and per Donor Conditions.
- b) Unless otherwise agreed, the Partner shall, prior to publishing any material or document containing APHRC or the Donor's name or logo, submit such material or document to APHRC for approval.
- c) In carrying out the Project, the Partner will not do anything that may reasonably be expected to damage the reputation of APHRC or the Donor.

I 4. INTELLECTUAL PROPERTY

- a) Any intellectual property rights in materials prepared by or on behalf of any party to this Agreement in pursuance of the Project shall be owned by that party, but licensed to the other party, on a worldwide, perpetual, royalty-free and irrevocable basis, to use or allow others to use for the purposes of this Project.



**African Population and
Health Research Center**

- b) Where APHRC has provided the Partner with any of its intellectual property rights for use in connection with the Project the Partner shall on termination of this Agreement, cease to use such intellectual property rights immediately and shall either return or destroy such intellectual property rights as requested by APHRC.

15. DATA PROTECTION

APHRC and the Partner agree to keep each other's information, including personal information, which is disclosed during the term of this Agreement strictly confidential and in compliance with data privacy practices aligned with the Laws of Kenya and the EU General Data Protection Regulations (GDPR). The Data Protection Principles contained in the Data Protection Act 2019 shall apply in the event that the parties collect, receive, use, transfer or store any personal data in the performance of projects initiated or implemented under this Agreement. This clause shall survive the expiry or termination of this Agreement.

16. AMENDMENT OF AGREEMENT

- a) Amendments to this Agreement or the annexes will be made in writing and signed by persons authorised to act on behalf of the parties hereto.
- b) Where approval is also required from the Donor, APHRC is responsible for seeking that approval before confirming the amendment with the Partner.

17. CONFIDENTIALITY

- a) APHRC and the Partner agree to share information pertaining to the Project (including information on relevant safety and security risk) with each other. All other information/details concerning the project shall be kept confidential and shall not be disclosed to others, without prior written consent of the other party.

18. ALTERATION, SUSPENSION OR TERMINATION OF THE AGREEMENT

- a) Termination of the Agreement:
 - i. Either party may terminate the Agreement by giving 21 days written notice unless otherwise specified in the Specific terms and conditions.
- b) APHRC may, without prejudice to its other rights, suspend or terminate this Agreement with immediate effect by written notice to the Partner where:
 - i. the Partner, either directly or through its personnel or through a third party, breaches any of its obligations under this Agreement and fails to remedy such breach within Five (5) days of being notified by APHRC;



**African Population and
Health Research Center**

- ii. for any reason, the Partner is unable to continue with the implementation of the Project under the terms and conditions hereof;
 - iii. direct or indirect publicity concerning the Partner materially and adversely prejudices the activities of APHRC, or the Partner;
 - iv. there is misuse or misappropriation of Project funds or assets, or any fraud or acts in connection with the Project which may bring APHRC into disrepute or is materially adverse to the interests of APHRC; or
 - v. it is required in order to comply with applicable laws or requirements of regulatory authorities.
- c) Suspension or termination due to security and fraud risk:
 - i. In the event there is a security risk in the geographic areas of, or there is suspected to be systematic fraud, corruption or a diversion of funds within, the Project's operations which could significantly impair the developmental value of the Project or present an unacceptable level of risk to a party, the parties shall consult at the earliest opportunity on measures to resolve the problem and identify possible courses of action.
- d) If the Agreement is terminated under this Clause 18, the Partner shall:
 - i. stop Project activities and take all reasonable steps to preserve and protect all work produced to date and comply with instructions from APHRC in relation to these activities;
 - ii. provide an account reconciliation of award funded expenditure up to the date of termination. This should include any further expenditure after the date of termination which it cannot reasonably be expected to avoid or recover;
 - iii. submit a final narrative and financial report to APHRC within 30 days of the termination date;
 - iv. unless otherwise agreed in writing by both parties, return to APHRC the assets and equipment (if any) purchased using funding made available under this Agreement within 30 days of the termination date;
 - v. transfer back any unspent funds to APHRC within 30 days of the termination date.
- e) APHRC will make payments due to the Partner under this Agreement following a termination for activities, inputs and outputs rendered to APHRC's satisfaction up to the date of termination. APHRC shall not be obligated to pay for any expenses incurred by the Partner after the effective date of the notice of early termination which the Partner can reasonably be expected to avoid or recover. In addition, APHRC reserves the right to recover any sums which have been paid in



African Population and
Health Research Center

advance and which are unspent, or should not reasonably have been spent, at the date of termination or to offset any such sums against any payments due.

f) Force Majeure

- i. Neither party will be liable for failure or delay to perform obligations under this Agreement, which have become practicably impossible because of circumstances beyond the reasonable control of the applicable party. Such circumstances include without limitation natural disasters or acts of nature; acts of terrorism; labor disputes or stoppages; war; government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies; or any other cause, whether similar in kind to the foregoing or otherwise, beyond the party's reasonable control.
- ii. Written notice of a party's failure or delay in performance due to force majeure must be given to the other party no later than twenty-one (21) business days following the force majeure event commencing, which notice shall describe the force majeure event and the actions taken to minimize the impact thereof. The parties hereby agree, when feasible, not to cancel but reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist.

19. DISPUTE RESOLUTION MECHANISMS

- a) Both APHRC and the Partner agree to solve all misunderstandings or disputes that might arise throughout the implementation of the Project in a friendly manner.
- b) If having used reasonable endeavours to settle a dispute informally, either party considers the dispute cannot be so settled, it may give notice that the dispute is being referred to the appropriate level in accordance with the escalation procedure below for resolution.
- c) The recommended levels of the escalation procedures are:
 - i. **1st level.** APHRC Project Manager and Partner Project Manager.
 - ii. **2nd level.** APHRC Director of Operations and equivalent position at the Partner.
 - iii. **3rd level.** APHRC Executive Director and equivalent position at the Partner.
- d) In the event that such negotiation is unsuccessful, the Parties agree to seek amicable settlement by mediation that shall be conducted by a mediator to be jointly determined by the Parties. No Party may commence any court proceedings or arbitration in relation to such dispute until the Parties have attempted to settle by mediation and that mediation has terminated.



**African Population and
Health Research Center**

- e) If the dispute has not been settled pursuant to the mediation within thirty (30) working days from the date when the mediation was instituted, both APHRC and the Partner agree to settle the dispute by the appointment of a mutually agreed independent arbitrator. The award of the independent arbitrator shall be final and binding on both the parties.

20. ASSIGNMENT

This Agreement and any rights or obligations arising therefrom may not be assigned by the Partner without APHRC's prior written consent.

21. NOTICES

Any notice that is delivered shall be deemed to have been received on delivery; any notice sent by electronic mail shall be deemed to have been received one working day after being sent; any notice given by letter shall be deemed to have been received 15 calendar days after the date of mailing.

22. SEVERABILITY

The invalidity or unenforceability of any part of this Agreement shall not invalidate or affect the remainder, which shall continue to govern the relative rights and duties of the parties as though the invalid or unenforceable part were not a part hereof.

23. GOVERNING LAW

The Laws of the Republic of Kenya shall govern the validity, construction, interpretation and enforceability of this Agreement.

The Partner hereby affirms that it has read, understood, acknowledged and accepted the Terms and Conditions in this Annex B as part of the Agreement.